

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 40

THE UNITED STATES OF AMERICA, PETITIONER,

*vs.*

GULF REFINING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT.

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a        Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September term, 1922, of said court, before the Honorable Robert E. Lewis and the Honorable William S. Kenyon, circuit judges, and the Honorable Tillman D. Johnson, district judge.

Attest:

[SEAL.]

E. E. KOCH,

*Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to wit, on the nineteenth day of July, A. D. 1921, a transcript of record, pursuant to a writ of error directed to the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Gulf Refining Company was plaintiff in error and the United States of America was defendant in error, which said transcript as prepared, printed, and certified by the clerk of said district court in pursuance of an act of Congress approved February 13, 1911, is in the words and figures following, to wit:

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE R. L. WILLIAMS, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

**GULF REFINING COMPANY, a Corporation,**  
***Plaintiff in Error,***

*Be It Remembered*, that at a Special Session of the United States Court for the Eastern District of Oklahoma, held at Muskogee, Oklahoma, on the 22nd day of November, A. D. 1919, the grand jurors of the United States of America, duly empaneled, sworn and charged at the term aforesaid, of the court aforesaid, returned into court Indictment No. 3716, and others. Said Indictment No. 3716, being against the Gulf Refining Company for violation of "The Act to Regulate Commerce," approved February 4, 1887, as amended, and is in words and figures as follows, to-wit:

United States of America, Eastern District of Oklahoma.

In the United States District Court for the Eastern District of Oklahoma, at the Special March, A. D. 1919, Term thereof, at Muskogee.

## COUNT 1.

The grand jurors of the United States of America, empaneled, sworn and charged at the term aforesaid, of the court aforesaid, to inquire into and due presentment make of offenses against the United States of America, do, upon their oaths, present, find and charge:

I. That throughout the period of time from the first day of December, 1916, to and including the first day of March, 1917, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas and was engaged in the business of producing and selling gasoline and other petroleum products, with a place of business at West Port Arthur, in the State of Texas; that the Gypsy Oil Company, during the aforesaid period, was a corporation under the laws of the State of Oklahoma, and was engaged in the producing of gasoline at Kiefer, in the State of Oklahoma, and the shipping of said gasoline from said Kiefer to various points and places in other states, and particularly to the said Gulf Refining Company, in tank cars, at said West Port Arthur.

II. That throughout the aforesaid period of time St. Louis-San Francisco Railway Company was a corporation organized and existing under the laws of the State of Missouri, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line of The Kansas City Southern Railway Company; that said The Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line operated by the Texarkana and Fort Smith Railway Company; that said Texarkana and Fort Smith Railway Company was a corporation organized and existing under the laws of the State of Texas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire; that throughout said period the three common carriers aforesaid, having theretofore established, did maintain and operate a through railway route for the continuous transportation of property, including gasoline, in interstate commerce, wholly by railroad, for hire, from said Kiefer, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to Port Arthur and West Port Arthur, both in the State of Texas, over their said re-

spective connecting railway lines, and were engaged in the transportation of property, including gasoline, for hire, over the said through railway route, and were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce." and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That throughout said period said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company had established their joint rates and charges for the transportation of certain property, to-wit: gasoline, in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges, throughout the aforesaid period, showed the joint rate of said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, for the transportation of gasoline, in tank cars, from said Kiefer, over their aforesaid through railway route, to said West Port Arthur, to be thirty-three (33) cents for each one hundred pounds thereof; that said schedules and tariffs of rates and charges further provided that charges on shipments of gasoline, in tank cars, from said Kiefer to said West Port Arthur, over the aforesaid route, would be computed and imposed at the aforesaid rate of thirty-three (33) cents per one hundred pounds, at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars; and that the said rate of thirty-three (33) cents per one hundred pounds was the lawfully established rate chargeable for the transportation of the shipments hereafter described in this count and in counts 2 to 15, both inclusive, of this indictment.

IV. That during said period of time, to-wit: on the 17th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 8049 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1030," consigned to said Galf Refining Com-



pany; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,143 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and at the point last mentioned did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$177.35 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 15th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.55, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 2.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the cir-



cumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 4th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 72,037 gallons, then and there contained in 9 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1001"	8,158 gallons
"G.R.C.X."	"1072"	8,138 gallons
"G.R.C.X."	"1209"	8,092 gallons
"G.R.C.X."	"1239"	8,099 gallons
"G.R.C.X."	"1602"	8,023 gallons
"G.R.C.X."	"1607"	8,016 gallons
"G.R.C.X."	"1014"	8,161 gallons
"G.R.C.X."	"1763"	8,100 gallons
"G.R.C.X."	"2006"	8,146 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,588.47, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$649.83, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 3.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 6th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 32,230 gallons, then and there contained in 4 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 437"	8,137 gallons
"G.R.C.X."	" 621"	8,005 gallons
"G.R.C.X."	"1039"	8,157 gallons
"G.R.C.X."	"1143"	8,371 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$711.55, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$292.18, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 4.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period

of time, to-wit: on the 7th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 23,932 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1113"	8,139 gallons
"G.R.C.X."	"1378"	8,093 gallons
"G.R.C.X."	"1621"	8,016 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$528.13, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds there-

of, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$216.44, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 5.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 21st day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 15,930 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1111"	8,137 gallons
"G.R.C.X."	"1619"	8,016 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$351.81, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds there-

of, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$143.92, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 6.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 6,577 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "309," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 6,662 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that



on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$145.09, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$59.62, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 7.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count



as fully as if they were here repeated, during the said period of time, to-wit: on the 27th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 24,134 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 445"	8,140 gallons
"G.R.C.X."	"1080"	8,185 gallons
"G.R.C.X."	"1385"	8,092 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$531.79, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nine-

teen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$218.18, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 8.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 28th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 22,970 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 422"	7,044 gallons
"G.R.C.X."	"1100"	8,134 gallons
"G.R.C.X."	"1220"	8,096 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in

the amount of \$506.90, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.37, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 9.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 29th day of December, 1916, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 78,906 gallons, then and there contained in 10 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capaci-

ties were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 168"	7,016 gallons
"G.R.C.X."	"1054"	8,094 gallons
"G.R.C.X."	"1079"	8,147 gallons
"G.R.C.X."	"1136"	8,144 gallons
"G.R.C.X."	"1211"	8,093 gallons
"G.R.C.X."	"1232"	8,095 gallons
"G.R.C.X."	"1602"	8,023 gallons
"G.R.C.X."	"1612"	8,023 gallons
"G.R.C.X."	"1763"	8,100 gallons
"G.R.C.X."	"2016"	8,153 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,739.96, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common

carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$711.80, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 10.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the first count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 3rd day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 40,045 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 961"	8,056 gallons
"G.R.C.X."	"1024"	8,145 gallons
"G.R.C.X."	" 973"	8,056 gallons
"G.R.C.X."	"2006"	8,146 gallons
"G.R.C.X."	"1327"	8,096 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$882.07, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds

thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of January, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$360.84, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 11.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 32,128 gallons, then and there contained in 4 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:



Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 428"	8,175 gallons
"G.R.C.X."	"1278"	8,097 gallons
"G.R.C.X."	"1347"	8,090 gallons
"G.R.C.X."	"2025"	8,153 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$708.17 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$289.77, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.



## COUNT 12.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 23,529 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 629"	7,604 gallons
"G.R.C.X."	"1356"	8,093 gallons
"G.R.C.X."	"1358"	8,092 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$518.12 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 23rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a conces-

sion in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$211.96, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 13.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 39,005 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 328"	7,062 gallons
"G.R.C.X."	" 445"	8,140 gallons
"G.R.C.X."	"1153"	8,130 gallons
"G.R.C.X."	"1359"	8,086 gallons
"G.R.C.X."	"2008"	8,148 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refin-

ing Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$861.74 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$352.52, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 14.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were

in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 40,101 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1155"	8,130 gallons
"G.R.C.X."	"1225"	8,095 gallons
"G.R.C.X."	"2027"	8,149 gallons
"G.R.C.X."	"1243"	8,093 gallons
"G.R.C.X."	"1397"	8,099 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$883.53 at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 23rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds

thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$361.44, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 15.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 1st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of January, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said St. Louis-San Francisco Railway Company, for transportation, a certain quantity of gasoline, to-wit: 8,068 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2013" consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,148 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$177.46, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 23rd day of February, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said St. Louis-San Francisco Railway Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.59, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 16.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from the first day of February, 1917, to and including the 27th day of December, 1917, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas and was engaged in the business of producing and selling gasoline and other petroleum products, with a place of business at West Port Arthur, in the State of Texas; that the Gypsy Oil Company, during the aforesaid period, was a corporation under the laws of the State of Oklahoma, and was engaged in the producing of gasoline at Kiefer, in the State of Oklahoma, and the shipping of said gasoline from said Kiefer to various points and places in other states, and particularly to the said Gulf Refining Company, in tank cars, at said West Port Arthur.

II. That throughout the aforesaid period of time the Midland Valley Railroad Company was a corporation organized and existing under the laws of the State of Arkansas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and



it operated a railway line which connected with the railway line of The Kansas City Southern Railway Company; that said The Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line operated by the Texarkana and Fort Smith Railway Company; that said Texarkana and Fort Smith Railway Company was a corporation organized and existing under the law of the State of Texas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire; that throughout said period the three common carriers aforesaid, having theretofore established, did maintain and operate a through railway route for the continuous transportation of property, including gasoline, in interstate commerce, wholly by railroad, for hire, from said Kiefer, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this court, to Port Arthur and West Port Arthur, both in the State of Texas, over their said respective connecting railway lines, and were engaged in the transportation of property, including gasoline, for hire, over the said through railway route, and were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That throughout said period said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company had established their joint rates and charges for the transportation of certain property, to-wit: gasoline, in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges, throughout the aforesaid period, showed the joint rate of said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, for the transportation of gasoline, in tank cars, from said Kiefer, over their aforesaid through railway route, to said West Port Arthur, to be thirty-three (33) cents for each one hundred pounds thereof; that said schedules and tariffs of rates and charges further provided that charges on shipments of gasoline, in tank cars, from said Kiefer to said West Port Arthur, over



the aforesaid route, would be completed and imposed at the aforesaid rate of thirty-three (33) cents per one hundred pounds, at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said cars; and that the said rate of thirty-three (33) cents per one hundred pounds was the lawfully established rate chargeable for the transportation of the shipments hereafter described in this count and in counts 17 to 35, both inclusive, of this indictment.

IV. That during said period of time, to-wit: on the 30th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,999 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1462," consigned to said Gulf Refining Company: that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,093 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$176.26, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 3rd day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the

said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.09, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 17.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 5th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 24,041 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1061"	8,180 gallons
"G.R.C.X."	"1155"	8,130 gallons
"G.R.C.X."	"1607"	8,016 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said

West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$529.82, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of March, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$217.40, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 18.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 19,870 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said

tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 950"	8,059 gallons
"G.R.C.X."	" 1507"	12,023 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$437.38, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$178.92, lawful money of the United States, contrary to the form of the statute in

such case made and provided and against the peace and dignity of the United States.

### COUNT 19.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,051 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company: that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1038"	8,151 gallons
"G.R.C.X."	"1206"	8,089 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$353.71, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$144.69, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 20.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 23,133 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 332"	7,065 gallons
"G.R.C.X."	"1029"	8,225 gallons
"G.R.C.X."	"1064"	8,144 gallons



that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$510.40, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.78, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 21.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the

said period of time, to-wit: on the 21st day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 21,682 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 309"	6,662 gallons
"G.R.C.X."	" 332"	7,065 gallons
"G.R.C.X."	"1029"	8,225 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$478.12, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 15th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds

thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$195.59, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 22.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of May, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 54,968 gallons, then and there contained in 7 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 422"	7,044 gallons
"G.R.C.X."	" 428"	8,175 gallons
"G.R.C.X."	"1178"	8,130 gallons
"G.R.C.X."	" 620"	8,018 gallons
"G.R.C.X."	"1083"	8,140 gallons
"G.R.C.X."	"1237"	8,099 gallons
"G.R.C.X."	"1368"	8,093 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said

West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,213.11, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 29th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$496.21, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 23.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 2nd day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,168 gallons, then and there contained in 2 tank cars, consigned to

said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 428"	8,175 gallons
"G.R.C.X."	"1083"	8,140 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$355.34, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 27th day of June, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$145.36, lawful money

of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 24.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 88,972 gallons, then and there contained in 11 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1201"	8,082 gallons
"G.R.C.X."	"1206"	8,089 gallons
"G.R.C.X."	"1225"	8,095 gallons
"G.R.C.X."	"1624"	8,014 gallons
"G.R.C.X."	"1727"	8,101 gallons
"G.R.C.X."	"1852"	8,170 gallons
"G.R.C.X."	"1854"	8,176 gallons
"G.R.C.X."	"1856"	8,178 gallons
"G.R.C.X."	"1858"	8,173 gallons
"G.R.C.X."	"1950"	8,013 gallons
"G.R.C.X."	"1951"	8,011 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount



of \$1,940.63, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of July, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$793.87, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 25.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 16th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 24,362 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the afore-

said schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1852"	8,170 gallons
"G.R.C.X."	"1855"	8,179 gallons
"G.R.C.X."	"1947"	8,013 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$530.60, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$217.06, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 26.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 17th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,011 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1946", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,011 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$174.48, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds

thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$71.38, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 27.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 40,298 gallons, then and there contained in 5 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1033"	8,173 gallons
"G.R.C.X."	"1206"	8,089 gallons
"G.R.C.X."	"1271"	8,095 gallons
"G.R.C.X."	"1706"	8,098 gallons
"G.R.C.X."	"1708"	8,101 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Re-

fining Company; that thereupon freight charges in the amount of \$883.32, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 28th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$361.44, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 28.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 40,185 gallons, then and there contained in 5 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell ca-

capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 924"	8,059 gallons
"G.R.C.X."	"1721"	8,101 gallons
"G.R.C.X."	"1728"	8,101 gallons
"G.R.C.X."	"1774"	8,100 gallons
"G.R.C.X."	"1798"	8,100 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$881.25, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$360.50, lawful money



of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 29.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 14th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,201 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1366"	8,093 gallons
"G.R.C.X."	"1865"	8,175 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$354.32, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well know-

ing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$144.94, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 30.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,044 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1245", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,096 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Ar-

thur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$176.33, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 27th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.13, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 31.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of September, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 24,148 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the

initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1710"	8,100 gallons
"G.R.C.X."	"1786"	8,100 gallons
"G.R.C.X."	"1978"	8,014 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$527.38, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of October, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was thirteen and one-half (13½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said com-

mon carriers amounted in the aggregate to \$215.74, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 32.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,928 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1127", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,056 gallons. which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$175.46, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half (13½) cents of

the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$71.77, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 33.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 25th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 23,953 gallons, then and there contained in 3 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1366"	8,093 gallons
"G.R.C.X."	"1774"	8,100 gallons
"G.R.C.X."	"1978"	8,014 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said



West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$527.23, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$215.68, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 34.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 30th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 23,899 gallons, then and there contained in 3 tank cars, consigned to

said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 610"	8,012 gallons
"G.R.C.X."	"1424"	8,090 gallons
"G.R.C.X."	"2027"	8,149 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$528.19, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from

the said common carriers amounted in the aggregate to \$216.04, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 35.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 16th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 24th day of November, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 15,947 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.P.T.X."	" 625"	8,050 gallons
"G.P.T.X."	" 630"	8,055 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$350.77, at the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 27th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well know-

ing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of thirteen and one-half ( $13\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Kiefer to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$143.48, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 36.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from 12 o'clock noon on the 28th day of December, 1917, to and including the 1st day of June, 1918, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto, the Midland Valley Railroad Company, a corporation under the laws of the State of Arkansas, The Kansas City Southern Railway Company, a corporation under the laws of the State of Missouri, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, operated connecting railway routes and were common carriers engaged in the transportation of property, including gasoline, for hire, over their connecting railway route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the railway line of said Midland Valley Railroad Company, to-wit: Kiefer, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to certain points on the railway line of said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port

Arthur, both in the State of Texas, and so were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That the President of the United States did, by his proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes of the three common carriers aforesaid, and did in said proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads appointed and designated by the President; that throughout the aforesaid period, from 12 o'clock noon on the 28th day of December, 1917, to and including the 1st day of June, 1918, said railway routes and lines of transportation of the three said common carriers were controlled, operated, and utilized by the Director General of Railroads, which control, operation and utilization is herein termed Federal control, for the transportation of property, including gasoline, for hire, over the said through railway route.

IV. That throughout the period of time from January 1st, 1918, to June 1st, 1918, both dates inclusive, said three common carriers, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published, schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full) which showed that the lawfully established rate for the transportation of gasoline, in tank cars, from said Kiefer, over the aforesaid connecting through railway route, to said Port Arthur and West Port Arthur, throughout the last mentioned period, was 33 cents for each 100 pounds thereof, and said schedules and tariffs further provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rate of 33 cents per 100 pounds, would be computed and imposed at a weight of 6.6 pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless such full shell capacity of the tank cars was in excess of the weight carrying capacity of the trucks of such tank cars.

V. That throughout the last mentioned period The Texas Company, a corporation under the laws of the State of Texas, as consignor and consignee of shipments, was engaged in shipping gasoline, in tank cars, from said Kiefer, over the aforesaid through railway route, to said Port Arthur, and at divers times during said period did ship and cause to be shipped large quantities of gasoline, in tank cars, from said

Kiefer, over the said through railway route, to said Port Arthur, consigned to said The Texas Company, at the said lawfully established rate of 33 cents per 100 pounds, chargeable for such transportation, the dates of some of said shipments, the quantities of some of said gasoline shipped, and the cars in which some of the shipments were transported, being as follows, to-wit:

Dates of shipments.	Quantities in gallons.	Car Initials and numbers.
January 25, 1918	32,391	T.C.X. 4193
		T.C.X. 4574
		T.C.X. 3112
		T.C.X. 3012
February 16, 1918	16,335	T.C.X. 4428
		T.C.X. 2740
March 16, 1918	24,394	T.C.X. 2901
		T.C.X. 3107
		T.C.X. 1881
April 1, 1918	16,305	T.C.X. 2226
		T.C.X. 3113
April 27, 1918	40,464	T.C.X. 4691
		T.C.X. 4435
		T.C.X. 4678
		T.C.X. 3068
		T.C.X. 3058

VI. That during said period of time, to-wit: on the 25th day of January, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, the Gypsy Oil Company, a corporation under the laws of the State of Oklahoma, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 80,022 gallons, then and there contained in 10 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars, containing said gasoline, and the full shell capacities of said tank cars, as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2103"	8,084 gallons
"G.R.C.X."	"2108"	8,084 gallons
"G.R.C.X."	"2115"	8,075 gallons



Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2119"	8,084 gallons
"G.R.C.X."	"2160"	8,084 gallons
"G.R.C.X."	"2172"	8,082 gallons
"G.R.C.X."	"2177"	8,085 gallons
"G.R.C.X."	"2182"	8,080 gallons
"G.R.C.X."	"2189"	8,079 gallons
"G.R.C.X."	"2198"	8,080 gallons

that on, to-wit: the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline, in said tank cars, over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and at the point last mentioned did deliver said tank cars containing said gasoline, to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,760.19, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the transportation of the said shipment of gasoline.

VII. That on, to-wit: the 21st day of February, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to thirteen and one-half ( $13\frac{1}{2}$ ) cents for each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds of said gasoline, which was thirteen and one-half ( $13\frac{1}{2}$ ) cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of thirty-three (33) cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received by said Gulf Refining Company amounted in the aggregate to \$720.00, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 37.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 16th day of February, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 7,921 gallons, then and there contained in 1 tank car, consigned to said Gulf Refining Company; that the initials and number of said tank car containing said gasoline, and the full shell capacity of said tank car as shown in the aforesaid schedules and tariffs, which said full shell capacity was not in excess of the weight carrying capacity of the trucks of said tank car, was as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1400"	8,093 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and did there deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$176.27, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 11th day of March, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the afore-

said lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$72.10, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. ✓

## COUNT 38.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 14th day of March, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 72,702 gallons, then and there contained in 9 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full sell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1708"	8,101 gallons
"G.R.C.X."	"2106"	8,077 gallons
"G.R.C.X."	"2107"	8,080 gallons
"G.R.C.X."	"2116"	8,083 gallons
"G.R.C.X."	"2120"	8,077 gallons
"G.R.C.X."	"2149"	8,083 gallons
"G.R.C.X."	"2154"	8,078 gallons
"G.R.C.X."	"2159"	8,079 gallons
"G.R.C.X."	"2197"	8,077 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from

said Kiefer to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,584.18, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 13th day of April, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$648.01, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. ✓

#### COUNT 39.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 40,309 gallons, then and there contained in 5 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were

not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.P.T.X."	" 401"	8,048 gallons
"G.P.T.X."	" 406"	8,045 gallons
"G.P.T.X."	" 436"	8,042 gallons
"G.P.T.X."	" 503"	8,250 gallons
"G.P.T.X."	" 554"	8,254 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$885.12, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 1st day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$362.09, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. ✓



## COUNT 40.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 36th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 26th day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Kiefer, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 56.712 gallons, then and there contained in 7 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1250"	8,098 gallons
"G.R.C.X."	"1430"	8,095 gallons
"G.R.C.X."	"1816"	8,212 gallons
"G.R.C.X."	"1854"	8,176 gallons
"G.R.C.X."	"2123"	8,080 gallons
"G.R.C.X."	"2166"	8,078 gallons
"G.R.C.X."	"2197"	8,077 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Kiefer to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1237.45, at the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 31st day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the



transportation of the last mentioned shipment amounting to 13½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Kiefer to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 13½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 33 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$506.19, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 41.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from the first day of February, 1917, to and including the 27th day of December, 1917, the Gulf Refining Company was a corporation organized and existing under the laws of the State of Texas and was engaged in the business of producing and selling gasoline and other petroleum products, with a place of business at West Port Arthur, in the State of Texas; that the Gypsy Oil Company, during the aforesaid period, was a corporation under the laws of the State of Oklahoma, and was engaged in the producing of gasoline at Jenks, in the State of Oklahoma, and the shipping of said gasoline from said Jenks to various points and places in other states, and particularly to the said Gulf Refining Company, in tank cars, at said West Port Arthur.

II. That throughout the aforesaid period of time Midland Valley Railroad Company was a corporation organized and existing under the laws of the State of Arkansas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line of The Kansas City Southern Railway Company; that said The Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and it operated a railway line which connected with the railway line operated by the Texarkana and Fort

Smith Railway Company; that said Texarkana and Fort Smith Railway Company was a corporation organized and existing under the laws of the State of Texas, and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire; that throughout said period the three common carriers aforesaid, having theretofore established, did maintain and operate a through railway route for the continuous transportation of property, including gasoline, in interstate commerce, wholly by railroad, for hire, from said Jenks, in the County of Tulsa, State of Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this court, to Port Arthur and West Port Arthur, both in the State of Texas, over their said respective connecting railway lines, and were engaged in the transportation of property, including gasoline, for hire, over the said through railway route, and were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That throughout said period said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company had established their joint rates and charges for the transportation of certain property, to-wit: gasoline, in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges, throughout the aforesaid period, showed the joint rate of said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, for the transportation of gasoline, in tank cars, from said Jenks, over their aforesaid through railway route, to said West Port Arthur, to be thirty-nine (39) cents for each one hundred pounds thereof; that said schedules and tariffs of rates and charges further provided that charges on shipments of gasoline, in tank cars, from said Jenks to said West Port Arthur, over the aforesaid route, would be computed and imposed at the aforesaid rate of thirty-nine (39) cents per one hundred pounds, at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars; and that the said rate of thirty-nine (39) cents per one hundred pounds was the

lawfully established rate chargeable for the transportation of the shipments hereafter described in this count and in counts 42 to 64, both inclusive, of this indictment.

IV. That during said period of time, to-wit: on the 21st day of February, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 6,937 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "422", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 7,044 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$181.31 at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 31st day of March, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their afore-

said through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$90.67, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 42.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 22nd day of February, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,010 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1718," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,103 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.57, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of March, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Com-

pany, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.28, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 43.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 25th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,032 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 434"	8,180 gallons
"G.R.C.X."	"1369"	8,092 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and



said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$418.84 at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of April, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$209.43, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 44.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 29th day of March, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company,



for transportation, a certain quantity of gasoline, to-wit: 15,989 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing the said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1321"	8,089 gallons
"G.R.C.X."	"1370"	8,088 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.40, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from

the said common carriers amounted in the aggregate to \$208.08, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 45.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,027 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1178", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,130 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit. the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, and The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$209.27, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 12th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents

of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.63, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 46.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,998 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1209", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,092 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.29, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said

Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 12th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.14, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 47.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 30th day of April, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8.034 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "434," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,180 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given

by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$210.55, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 29th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$105.28, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 48.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of May, 1917, and while



the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,992 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1229", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,086 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.13, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 29th day of May, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.06. lawful money of the United States, contrary to the form of the statute in such case



made and provided and against the peace and dignity of the United States.

COUNT 49.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,347 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1850"	8,175 gallons
"G.R.C.X."	"1853"	8,172 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$420.77, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of July, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$210.39, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 50.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of June, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,069 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1232"	8,095 gallons
"G.R.C.X."	"1974"	8,007 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refin-

ing Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$414.47, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of July, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.25, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 51.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 6th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were

in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,117 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1268"	8,095 gallons
"G.R.C.X."	"1270"	8,088 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.56, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers,

as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.29, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 52.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 7th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 15,169 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 449"	7,060 gallons
"G.R.C.X."	"1037"	8,191 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$392.56, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said com-



mon carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$196.27, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 53.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 11th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,127 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:



Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1220"	8,096 gallons
"G.R.C.X."	"1743"	8,097 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.81, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.40, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 54.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 15th day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,013 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1957"	8,007 gallons
"G.R.C.X."	"1983"	8,006 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.17, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in

respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$205.87, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 55.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 21st day of July, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,014 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1956"	8,009 gallons
"G.R.C.X."	"1959"	8,005 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said

gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.20, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 11th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.10, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 56.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 7th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for

transportation, a certain quantity of gasoline, to-wit: 8,063 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1245", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,096 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.39, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 28th day of August, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.19. ✓  
lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.



## COUNT 57.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,116 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2022", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,152 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$209.83, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen



and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.89, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 58.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 15th day of August, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 8,065 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1729," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,098 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.44, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of September, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104.22, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 59.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 23rd day of September, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,155 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.P.T.X."	" 600"	8,052 gallons
"G.R.C.X."	"1071"	8,136 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.68, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.32, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 60.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period

of time, to-wit: on the 2nd day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 15,972 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1624"	8,014 gallons
"G.R.C.X."	"1983"	8,006 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.35, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half (19½) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half (19½) cents for each one hundred pounds thereof, which was nineteen and one-half (19½) cents

less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.18, ✓ lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 61.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 9th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,213 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1254"	8,092 gallons
"G.R.C.X."	"1864"	8,173 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$418.65, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the



said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$209.32, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 62.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,984 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "926," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,056 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company,



said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$207.36, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of November, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.67, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 63.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 25th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were

in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 7,989 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1981," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,008 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank car over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$206.13 at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property, so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route. which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.06, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 64.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 41st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 27th day of October, 1917, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to said Midland Valley Railroad Company, for transportation, a certain quantity of gasoline, to-wit: 16,006 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1265"	8,089 gallons
"G.R.C.X."	"2022"	8,152 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company did transport said gasoline in said tank cars over their aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$418.04, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company, and payable to the said common carriers for the transportation of the aforesaid shipment of gasoline.

That on to-wit: the 8th day of December, 1917, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said Midland Valley Railroad Company, said The Kansas City Southern Railway Company, and said Texarkana and Fort Smith Railway Company, a concession in

respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property so transported by the aforesaid common carriers, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less, for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed by said common carriers, as aforesaid, and in force at the time upon their aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$209.03, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 65.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from January 1, 1918, to May 31, 1919, both dates inclusive, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto, the Midland Valley Railroad Company, a corporation under the laws of the State of Arkansas, The Kansas City Southern Railway Company, a corporation under the laws of the State of Missouri, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, were common carriers operating a through railway line and route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the line of railway of the said Midland Valley Railroad Company, to-wit: Jenks, in the County of Tulsa, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to certain points on the line of the said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port Arthur, both in the State of Texas, and were engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, over said through railway line and route from said Jenks to said Port Arthur and West Port Arthur, and were subject to the Act of Congress approved February 4, 1887, entitled "An Act to regulate

commerce," and to the Acts of Congress amendatory thereof and supplementary thereto; that at 12 o'clock noon on the 28th day of December, 1917, the President of the United States of America did, by his Proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes and lines of the three common carriers aforesaid; and did in said Proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads, appointed and designated by the President; that throughout the aforesaid period of time said railway routes and lines of transportation of the three common carriers aforesaid were controlled, operated and utilized by the said Director General of Railroads, which control, operation and utilization is hereinafter termed Federal control, for the transportation of property, including gasoline, for hire, over the said railway line and route from said Jenks to said Port Arthur and West Port Arthur.

III. That throughout said period of time the three common carriers aforesaid, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full), which said schedules and tariffs of rates and charges showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Jenks, over the aforesaid through railway route, to said West Port Arthur, to be thirty-nine (39) cents for each one hundred pounds thereof throughout the period from January 1, 1918, to June 24, 1918, both dates inclusive; that said schedules and tariffs showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Jenks over the aforesaid through railway route, to said West Port Arthur, to be forty-three and one-half ( $43\frac{1}{2}$ ) cents for each one hundred pounds thereof throughout the period from July 29, 1918, to May 31, 1919, both dates inclusive; that said schedules and tariffs provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rates of 39 cents and  $43\frac{1}{2}$  cents, respectively, would be computed and imposed at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars.

IV. That during said period of time, to-wit: on the 2nd day of January, 1918, and while the aforesaid schedules and

tariffs of rates and charges were in force and effect, the Gypsy Oil Company, a corporation under the laws of the State of Oklahoma, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,005 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2124," consigned to the said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,084 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$208.08, at the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 24th day of January, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof, than the rate named in the schedules and tariffs published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers, under Federal control, amounted in the aggregate to \$104.03, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.



## COUNT 66.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 11th day of January, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,899 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2106"	8,077 gallons
"G.R.C.X."	"2183"	8,078 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.83 at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of February, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property

was transported from said Jenks to said West Port Arthur at a rate and charge of  $19\frac{1}{2}$  cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.90, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 67.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 7th day of June, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,153 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2150"	8,074 gallons
"G.R.C.X."	"2151"	8,079 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.78, at the aforesaid lawfully

established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 2nd day of July, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of  $19\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of  $19\frac{1}{2}$  cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.89, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 68.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,088 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1335"	8,090 gallons
"G.R.C.X."	"1712"	8,101 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.76, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of May, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of  $19\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of  $19\frac{1}{2}$  cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.37, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 69.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the

said period of time, to-wit: on the 9th day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,081 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 924"	8,059 gallons
"G.R.C.X."	"2178"	8,074 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.26 at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 31st day of May, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Com-

pany from the said common carriers amounted in the aggregate to \$207.62, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 70.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 28th day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,163 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2119"	8,084 gallons
"G.R.C.X."	"2171"	8,079 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.03, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 25th day of June, 1918, the said Gulf Refining Company, a corporation as aforesaid, well know-



ing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of  $19\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of  $19\frac{1}{2}$  cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.01, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 71.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of June, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,011 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "764" consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,044 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$207.05, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said

Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 13th day of July, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 19½ cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.52, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 72.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 13th day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,120 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1211"	8,093
"G.R.C.X."	"1446"	8,093

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$464.70, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 25th day of September, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.30, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 73.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 3rd day of October, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gas-

oline, to-wit: 16,047 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1381"	8,090 gallons
"G.R.C.X."	"1967"	8,009 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$462.20, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 17th day of October, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.20, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 74.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of November, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,124 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2110"	8,081 gallons
"G.R.C.X."	"2249"	8,062 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.47, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 30th day of November, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such prop-

erty was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.76, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 75.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 23rd day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,012 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1946"	8,011 gallons
"G.R.C.X."	"2245"	8,072 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$461.74, at the aforesaid lawfully



established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 6th day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.97 lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 76.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,925 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1930"	8,049 gallons
"G.R.C.X."	"2110"	8,081 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.10, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 21st day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.59, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 77.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the

said period of time, to-wit: on the 23rd day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,942 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"220C"	8,072 gallons
"G.R.C.X."	"2230"	8,072 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.50, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 1st day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Com-

pany from the said common carriers amounted in the aggregate to \$207.78, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 78.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 1st day of February, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,940 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2207"	8,070 gallons
"G.R.C.X."	"2240"	8,072 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.44, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 15th day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept

and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of  $19\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.75, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 79.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of February, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,827 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.P.T.X."	" 401"	8,048 gallons
"G.R.C.X."	"2155"	8,080 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from

said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.04, at the aforesaid lawfully established rate of  $43\frac{1}{2}$  cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 24th day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of  $19\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.57, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 80.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, and III of the 65th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 12th day of March, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,943 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight



carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2185"	8,080 gallons
"G.R.C.X."	"2223"	8,065 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$463.53, at the aforesaid lawfully established rate of 43½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of March, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Jenks to said West Port Arthur at a rate and charge of 24 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.79, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 81.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from 12 o'clock noon on the 28th day of December, 1917, to and including the

1st day of June, 1918, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto, the Midland Valley Railroad Company, a corporation under the laws of the State of Arkansas, The Kansas City Southern Railway Company, a corporation under the laws of the State of Missouri, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, operated connecting railway routes and were common carriers engaged in the transportation of property, including gasoline, for hire, over their connection railway routes for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the railway line of said Midland Valley Railroad Company, to-wit: Jenks, in the county of Tulsa, State of Oklahoma, in the Eastern District of Oklahoma and within the jurisdiction of this court, to certain points on the railway line of said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port Arthur, both in the State of Texas, and so were subject to the provisions of the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto.

III. That the President of the United States did, by his proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes of the three common carriers aforesaid, and did in said Proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads appointed and designated by the President; that throughout the aforesaid period, from 12 o'clock noon on the 28th day of December, 1917, to and including the 1st day of June, 1918, said railway routes and lines of transportation of the three said common carriers were controlled, operated, and utilized by the Director General of Railroads, which control, operation and utilization is herein termed Federal control, for the transportation of property, including gasoline, for hire, over the said through railway route.

IV. That throughout the period of time from January 1st, 1918, to June 1st, 1918, both dates inclusive, said three common carriers, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published, schedules and tariffs of rates and charges (which are too voluminous to be herein set forth in full) which showed that the lawfully established rate for the

transportation of gasoline, in tank cars, from said Jenks, over the aforesaid connecting through railway route, to said Port Arthur and West Port Arthur, throughout the last mentioned period, was 39 cents for each 100 pounds thereof, and said schedules and tariffs further provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rate of 39 cents per 100 pounds, would be computed and imposed at a weight of 6.6 pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless such full shell capacity of the tank cars was in excess of the weight carrying capacity of the trucks of such tank cars.

V. That throughout the last mentioned period the Totem Gasoline Company, as consignor of shipments, and The Texas Company, a corporation under the laws of the State of Texas, as consignee of shipments, were engaged in shipping gasoline, in tank cars, from said Jenks, over the aforesaid through railway route, to said Port Arthur, and at divers times during said period did ship and cause to be shipped large quantities of gasoline, in tank cars, from said Jenks, over the said through railway route, to said Port Arthur, consigned to said The Texas Company, at the said lawfully established rate of 39 cents per 100 pounds chargeable for such transportations. the date of some of said shipments, the quantities of some of said gasoline shipped, and the cars in which some of the shipments were transported, being as follows, to-wit:

Dates of shipments.	Quantities in gallons	Car Initials and Numbers.
January 19, 1918	24,355	T.C.X. 4565 T.C.X. 4589 T.C.X. 4558
February 4, 1918	8,055	T.C.X. 3104
March 7, 1918	16,350	N.O.X. 8015 T.C.X. 2690
April 27, 1918	10,671	T.C.X. 633
May 1, 1918	8,092	T.C.X. 2777

VI. That during said period of time, to-wit: on the 1st day of January, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 7,998 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2120", consigned to said Gulf Refining Company;

that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,077 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit: the date last mentioned, pursuant to instructions given by said Gypsy Oil Company, and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline, in said tank car, over the aforesaid through railway route, in interstate commerce, from said Jenks, to said West Port Arthur, and at the point last mentioned did deliver said tank car, containing said gasoline, to said Gulf Refining Company; that thereupon freight charges in the amount of \$207.90, at the aforesaid lawfully established rate of 39 cents for each 100 pounds thereof, became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the transportation of the said shipment of gasoline.

VII. That on, to-wit: the 24th day of January, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to nineteen and one-half ( $19\frac{1}{2}$ ) cents for each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of thirty-nine (39) cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of the said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received by said Gulf Refining Company from the said common carriers, under Federal control, amounted in the aggregate to \$103.94, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 82.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 28th day of January, 1918,

and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 15,775 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1072"	8,138 gallons
"G.R.C.X."	"1957"	8,007 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.57, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 27th day of February, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 19½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 19½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$207.68, lawful money of the United States, contrary to the form of the

statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 83.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 17th day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carrier, under Federal control, for transportation, a large quantity of gasoline, to-wit: 15,947 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1277"	8,093 gallons
"G.R.C.X."	"1431"	8,090 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$416.55, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 16th day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the



transportation of the last mentioned shipment amounting to  $19\frac{1}{2}$  cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of  $19\frac{1}{2}$  cents for each one hundred pounds of said gasoline, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounted in the aggregate to \$208.27, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 84.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 18th day of April, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 15,901 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1607"	8016 gallons
"G.R.C.X."	"1979"	8015 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver

said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$412.64, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 16th day of May, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 19½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 19½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$206.31, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 85.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II, III, IV and V of the 81st count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 15th day of May, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Jenks, did deliver to the said common carriers, under Federal control, for transportation, a large quantity of gasoline, to-wit: 16,157 gallons, then and there contained in 2 tank cars, consigned to said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capaci-

ties were not in excess of the respective weight carrying capacities of the trucks of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2101"	8,080 gallons
"G.R.C.X."	"2120"	8,077 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Jenks to said West Port Arthur, and did there deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$415.88, at the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof arose and became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers, under Federal control, for the said transportation of the said shipment of gasoline.

That on, to-wit: the 15th day of June, 1918, said Gulf Refining Company, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from said common carriers under Federal control, a concession in respect to the transportation of the last mentioned shipment amounting to 19½ cents upon each one hundred pounds of the gasoline so transported, whereby said gasoline was transported from said Jenks to said West Port Arthur at a rate of 19½ cents for each one hundred pounds of said gasoline, which was 19½ cents less for each one hundred pounds thereof than the aforesaid lawfully established rate of 39 cents for each one hundred pounds thereof, which was the lawfully established rate for the transportation last mentioned, and whereby a discrimination was practiced in favor of said Gulf Refining Company and against said The Texas Company, and said concession so accepted and received amounting in the aggregate to \$207.93, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 86.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge:

I. That throughout the period of time from 12 o'clock noon on the 28th day of December, 1917, to and including the

31st day of May, 1919, the Gulf Refining Company, herein indicted, was a corporation organized and existing under the laws of the State of Texas.

II. That on December 28, 1917, and prior thereto The Atchison, Topeka and Santa Fe Railway Company, a corporation under the laws of the State of Kansas, the Gulf, Colorado and Santa Fe Railway Company, a corporation under the laws of the State of Texas, and the Texarkana and Fort Smith Railway Company, a corporation under the laws of the State of Texas, were common carriers operating a through railway line and route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the line of railway of said The Atchison, Topeka and Santa Fe Railway Company, to-wit: Drumright, in the County of Creek, State of Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this court, to certain points on the line of the said Texarkana and Fort Smith Railway Company, to-wit: Port Arthur and West Port Arthur, both in the State of Texas, and were engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, over said through railway line and route from said Drumright to said Port Arthur and West Port Arthur, and were subject to the Act of Congress approved February 4, 1887, entitled "An Act to regulate commerce," and to the Acts of Congress amendatory thereof and supplementary thereto; that at 12 o'clock noon on the 28th day of December, 1917, the President of the United States of America did, by his Proclamation dated December 26, 1917, assume control of certain systems of railway transportation, including the railway routes and lines of the three common carriers aforesaid; and did in said Proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General of Railroads, appointed and designated by the President; that throughout the aforesaid period of time said railway routes and lines of transportation of the three common carriers aforesaid were controlled, operated and utilized by the said Director General of Railroads, which control, operation and utilization is hereinafter termed Federal control, for the transportation of property, including gasoline, for hire, over the said railway line and route from said Drumright to said Port Arthur and West Port Arthur.

III. That throughout said period of time the three common carriers aforesaid, under Federal control, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published schedules and tariffs of rates and charges (which are too voluminous to be herein set

forth in full) which said schedules and tariffs of rates and charges showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Drumright, over the aforesaid through railway route, to said West Port Arthur, throughout the period from June 1, 1918, to June 24, 1918, both dates inclusive, to be forty (40) cents for each one hundred pounds thereof; that said schedules and tariffs showed the lawfully established rate for the transportation of gasoline in tank cars, from said Drumright, over the aforesaid through railway route, to said West Port Arthur, throughout the period from June 25, 1918, to July 28, 1918, both dates inclusive, to be fifty (50) cents for each one hundred pounds thereof; that said schedules and tariffs showed the lawfully established rate for the transportation of gasoline, in tank cars, from said Drumright, over the aforesaid through railway route, to said West Port Arthur, throughout the period from July 29, 1918, to May 31, 1919, both dates inclusive, to be forty-four and one-half (44½) cents for each one hundred pounds thereof; that said schedules and tariffs further provided that charges on shipments of gasoline, in tank cars, transported at the aforesaid rates of 40 cents, 50 cents, and 44½ cents, respectively, would be computed and imposed at a weight of six and six-tenths (6.6) pounds per gallon upon the number of gallons shown in said schedules and tariffs as the full shell capacity of such tank cars, unless said full shell capacity of said tank cars was in excess of the weight carrying capacity of the trucks of said tank cars.

IV. That during said period of time, to-wit: on the 16th day of June, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, the Gypsy Oil Company, a corporation under the laws of the State of Oklahoma, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 40,329 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline and the full shell capacities of said tank cars, as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1228"	8,089 gallons
"G.R.C.X."	"1708"	8,101 gallons
"G.R.C.X."	"1726"	8,097 gallons

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1744"	8,096 gallons
"G.R.C.X."	"2199"	8,078 gallons

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, as aforesaid, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,068.17, at the aforesaid lawfully established rate of forty (40) cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

V. That on, to-wit: the 13th day of July, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce, of nineteen and one-half ( $19\frac{1}{2}$ ) cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of twenty and one-half ( $20\frac{1}{2}$ ) cents for each one hundred pounds thereof, which was nineteen and one-half ( $19\frac{1}{2}$ ) cents less for each one hundred pounds thereof, than the rate named in the schedules and tariffs published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$520.75, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 87.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said para-



graphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of July, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,034, gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1116," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,090 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$266.97, at the aforesaid lawfully established rate of 50 cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 5th day of August, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of  $24\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of  $25\frac{1}{2}$  cents for each one hundred pounds thereof, which was  $24\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$130.82, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 88.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 3rd day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 32,299 gallons, then and there contained in 4 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1383"	8,096
"G.R.C.X."	"1728"	8,101
"G.R.C.X."	"2119"	8,084
"G.R.C.X."	"2160"	8,084

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company: that thereupon freight charges in the amount of \$950.57, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 20th day of September, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of

the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate \$416.53, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 89.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 5th day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 56,409 gallons, then and there contained in 7 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1225"	8,095
"G.R.C.X."	"1455"	8,090
"G.R.C.X."	"1470"	8,098
"G.R.C.X."	"1611"	8,017
"G.R.C.X."	"2113"	8,078
"G.R.C.X."	"2170"	8,084
"G.R.C.X."	"2197"	8,077

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal con-

trol, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,660.54, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of September, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$727.63 lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 90.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of September, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 6,480 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "251," consigned to said Gulf Refining Company; that the

aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 6,510 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$191.20, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 7th day of October, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate \$83.78, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 91.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 4th day of October, 1918,

and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,128 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	" 745"	8,078
"G.R.C.X."	"2112"	8,083

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$474.65, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 19th day of October, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to



\$207.99, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 92.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 30th day of October, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 8,050 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1707," consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,101 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$237.93, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 14th day of November, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port

Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$104,26, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 93.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 2nd day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,946 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2173"	8,074
"G.R.C.X."	"2183"	8,078

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$474.38, at the aforesaid lawfully established rate of  $44\frac{1}{2}$  cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable

to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 18th day of December, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of  $19\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Point Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was  $19\frac{1}{2}$  cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$207.87, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 94.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 6th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 16,007 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2157"	8,072
"G.R.C.X."	"1976"	8,006

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company: that thereupon freight charges in the amount of \$472.21, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 22nd day of December, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$206.92, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 95.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 10th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity

of gasoline, to-wit: 8,045 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2194" consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,081 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit. the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$237.34 at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 26th day of December, 1918, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.84, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 96.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in

this count as fully as if they were here repeated, during the said period of time, to-wit: on the 19th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 15,895 gallons, then and there contained in 2 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1762"	8,098
"G.R.C.X."	"2207"	8,070

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$474.86, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 3rd day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at time upon the aforesaid through route, which said concession



so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$208.08, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

### COUNT 97.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 20th day of December, 1918, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 7,917 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "1956", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,009 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$235.22, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 1st day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such prop-

erty was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.07, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

## COUNT 98.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 23rd day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 24,031 gallons, then and there contained in 3 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"2185"	8,080
"G.R.C.X."	"2171"	8,079
"P.G.X."	"1549"	8,029

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight

charges in the amount of \$710.40 at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 4th day of February, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$311.30, lawful money of the United States, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 99.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the circumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 8th day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 39,800 gallons, then and there contained in 5 tank cars, consigned to the said Gulf Refining Company; that the initials and numbers of said tank cars containing said gasoline, and the full shell capacities of said tank cars as shown in the aforesaid schedules and tariffs, which said full shell capacities were not in excess of the respective weight carrying capacities of the trucks of the said tank cars, were as follows, to-wit:

Initial.	Number.	Full Shell Capacity of Tank.
"G.R.C.X."	"1956"	8,009
"G.R.C.X."	"2172"	8,082
"G.R.C.X."	"2178"	8,074
"G.R.C.X."	"2196"	8,083
"G.R.C.X."	"2248"	8,065

that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank cars over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank cars containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$1,183.99, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 21st day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$518.83, lawful money of the United States contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

#### COUNT 100.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find, present and charge that, under the cir-

cumstances and conditions set forth in paragraphs I, II and III of the 86th count of this indictment, which said paragraphs are hereby adopted, referred to and incorporated in this count as fully as if they were here repeated, during the said period of time, to-wit: on the 2nd day of January, 1919, and while the aforesaid schedules and tariffs of rates and charges were in force and effect, said Gypsy Oil Company, at said Drumright, did deliver to the said common carriers, under Federal control, for transportation, a certain quantity of gasoline, to-wit: 7,963 gallons, then and there contained in a tank car bearing the initials "G.R.C.X." and the number "2209", consigned to said Gulf Refining Company; that the aforesaid schedules and tariffs showed the full shell capacity of the tank car last mentioned to be 8,065 gallons, which was not in excess of the weight carrying capacity of the trucks of said tank car; that on, to-wit, the date last mentioned, pursuant to instructions given by said Gypsy Oil Company and said Gulf Refining Company, the said common carriers, under Federal control, did transport said gasoline in said tank car over the aforesaid through railway route, in interstate commerce, from said Drumright to said West Port Arthur, and, at the point last mentioned, did deliver said tank car containing said gasoline to said Gulf Refining Company; that thereupon freight charges in the amount of \$236.87, at the aforesaid lawfully established rate of 44½ cents for each one hundred pounds thereof, became due and payable and became a lawful debt and liability of the said Gulf Refining Company and payable to the said common carriers, under Federal control, for the transportation of the aforesaid shipment of gasoline.

That on, to-wit: the 17th day of January, 1919, the said Gulf Refining Company, a corporation as aforesaid, well knowing the premises aforesaid, unlawfully did knowingly accept and receive from the said common carriers, under Federal control, a concession in respect to the transportation of the aforesaid property, in interstate commerce of 19½ cents of the said freight rate upon each one hundred pounds of the said property transported as aforesaid, whereby such property was transported from said Drumright to said West Port Arthur at a rate and charge of 25 cents for each one hundred pounds thereof, which was 19½ cents less for each one hundred pounds thereof, than the rate named in the tariffs and schedules published and filed, as aforesaid, and in force at the time upon the aforesaid through route, which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$103.80, lawful money of the United States, contrary to the

form of the statute in such case made and provided and against the peace and dignity of the United States.

C. W. MILLER,

United States Attorney.

J. STANLEY PAYNE,

Special Assistant to United States Attorney.

A true bill:

V. L. DOWNING, Foreman.

Endorsed: No. 3716. United States District Court, Eastern District of Oklahoma, ..... Division. The United States of America vs. Gulf Refining Company. Indictment—Violation of "The Act to Regulate Commerce," Approved February 4, 1887, as amended. 32 Stat. L. 847, 34 Stat. L. 584. A true bill, V. L. Downing, Foreman. Filed in open court Nov. 22, 1919, R. P. Harrison, Clerk U. S. District Court.

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And, to-wit, on the 8th day of December, A. D. 1919, the defendant filed its Plea in Abatement, and Motion to Quash and Set Aside, which are in words and figures as follows:

#### **Plea in Abatement.**

Comes now the Gulf Refining Company by James B. Diggs, its attorney, who makes this plea in its behalf and by its authority, and having heard the indictment in this cause read, and protesting that it is not guilty of the premises charged in the said indictment, for plea, nevertheless, says, that it ought not be compelled to answer the same because it says that the said pretended indictment is not, in truth and in fact, a true bill voted by the Grand Jury purporting to do so, because the said pretended indictment was not read to, or by, said Grand Jury, and said Grand Jury did not, at any time, know the contents thereof, and, consequently, said Grand Jury did not vote upon the same.

And the said Gulf Refining Company saith further that neither it nor the said James B. Diggs, its attorney, had knowledge or information touching or concerning the matters hereinbefore alleged, until the date hereof, and after the said pretended indictment was returned to this court, and that this is the first opportunity in its power to make the objection presented by this plea, all of which the said Gulf Refining Company, by its said attorney is ready to verify.

Wherefore, the said Gulf Refining Company prays that



said indictment, and each and every count therein contained, be quashed and abated.

Gulf Refining Company,

By James B. Diggs,

Its Attorney.

James B. Diggs, being first duly sworn, on oath states that he has read the foregoing plea and that the matters and facts therein stated and set out are true, as he verily believes, and that he makes this plea and affidavit for said company by its authority.

James B. Diggs.

Subscribed and sworn to before me this 8th day of December, 1919.

(Seal)

F. R. Herod, Notary Public.

My commission expires—My Commission Expires July 2nd, 1923.

Endorsed: Filed Dec. 8, 1919. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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**Motion to Quash and Set Aside.**

Comes now the Gulf Refining Company, by its attorneys, defendant in the above entitled cause, and moves the court to quash, set aside, vacate and hold for naught the pretended indictment found and returned in this cause against it, on the following ground:

That said indictment is not an indictment found and returned by the Grand Jury in this, that said indictment was not read to the Grand Jury before its return into this court, nor was the same read by said Grand Jury, and said Grand Jury did not know the contents thereof.

JAMES B. DIGGS,

RUSH GREENSLADE,

W. E. LIETKE,

Attorneys for Defendant.

*Subscrib*

James B. Diggs, being first duly sworn on oath says that the matters of fact in the motion are true as he verily believes.

JAMES B. DIGGS.

Subscribed and sworn to this 8th Dec. 1919. R. P. Harrison, Clerk, (Seal) By E. H. Hubbard, Deputy.

Endorsed: Filed Dec. 8, 1919. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 7th day of January, A. D. 1920, the United States filed Demurrer to Plea in Abatement, which is in words and figures as follows:

**Demurrer to Plea in Abatement.**

The United States of America, by Archibald Bonds, its attorney for the Eastern District of Oklahoma, as to the plea of the Gulf Refining Company by it last above pleaded, says that the same and the matters therein contained in manner and form as the same are pleaded and set forth are not sufficient in law to preclude the United States from prosecuting the indictment against it, the said Gulf Refining Company, and the United States is not bound by law to answer the same. And this the said Archibald Bonds is ready to verify.

Wherefore, for want of a sufficient plea in this behalf he, the said Archibald Bonds, for the United States, prays judgment and that the said indictment may be adjudged good, and the said Gulf Refining Company may further answer thereto.

ARCHIBALD BONDS,

United States Attorney.

Muskogee, Oklahoma, January 7, 1920.

Endorsed: Filed Jan. 7, 1920. R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 2nd day of March, A. D. 1920, the following proceedings were had in this cause, present and presiding the Honorable R. L. WILLIAMS, Judge:

**Order Sustaining Motion to Strike Plea in Abatement.**

And now on this the 2nd day of March, 1920, this cause comes on to be heard on the plea in abatement of the defendant, Gulf Refining Company, to quash, set aside and hold for naught the indictments heretofore returned against it on the ground and for the reason that the same are not the action of the grand jury in that the same had not been read by the grand jury prior to the finding and return of same into court.

The court, after considering said plea, together with argument of counsel thereon, finds that the demurrer of the United States to said plea should be taken, held and treated as an exception to the sufficiency to same and also as a motion to strike said plea, and as so treated should be sustained.

It Is Therefore Ordered, Adjudged and Decreed, the said motion of the United States as to its sufficiency & to strike said

plea should be and the same hereby is sustained and the said plea is hereby overruled and denied and the same stricken from the records of this court; to which order, judgment and decree the defendant, Gulf Refining Company, did then and there object and except.

R. L. WILLIAMS,

Judge of the District Court of  
the Eastern District of Oklahoma.

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### **Order Sustaining Motion to Strike Motion to Quash Indictment**

Now on this the 2nd day of March, 1920, this cause comes on to be heard on the motion of the defendant, Gulf Refining Company, to quash, set aside and vacate the indictment heretofore returned in this cause.

The court, after considering said motion and the argument of counsel thereon, holds that the demurrer of the United States to such motion should be taken and held as an exception to the sufficiency of same and also as a motion to strike said motion to quash.

It Is Therefore Ordered, Adjudged and Decreed by the court that the said demurrer of the United States treated as an exception and motion to strike the motion to quash said indictment be and the same hereby is sustained. It is therefore ordered, adjudged and decreed that the motion of the Gulf Refining Company be and the same hereby is overruled, denied and stricken from the files of the court; to which judgment, action and order of the court the defendant, Gulf Refining Company, did then and there object and except.

R. L. WILLIAMS,

U. S. District Judge of the  
Eastern District of Oklahoma.

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And, to-wit, on the 15th day of March, A. D. 1920, the defendant filed Demurrer to the Indictment, which is in words and figures as follows:

### **Demurrer to Indictment.**

Comes now the defendant, Gulf Refining Company, by its attorney, James B. Diggs, and having heard the indictment in the above entitled cause read, defends the same and demurs thereto, and assigns the following grounds of demurrer:

First: That said indictment, and each and every count thereof, fails to state facts sufficient to constitute an offense against the laws of the United States.

Second: That the matters contained in said indictment, and each and every count thereof, in the manner and form as therein stated and set out, are not sufficient in law for the United States to have or maintain its aforesaid action against this defendant, and that this defendant is not bound by law to answer the same.

Third: That said indictment, and each and every count thereof, wholly fails to state or set out facts sufficient to show it was the duty of this defendant to pay the freight rate or charges therein set out.

Fourth: That the statement in each count of said indictment, that this defendant was liable to pay said freight rates or charges is a conclusion and not a statement of fact, and that the facts on which such conclusion is based, are not set out.

Wherefore, for want of sufficient indictment, said defendant prays judgment that the United States be barred from having or maintaining the aforesaid indictment against it, and this defendant further states and assigns to the court here, the following special causes of demurrer:

To the counts numbered 36, 37, 38, 39, 40, 81, 82, 83, 84 and 85, that each of said counts is bad for duplicity in this:

(a) In that in and by each of said counts, said indictment attempts to charge this defendant with the commission of more than one separate offense, in that, each of said counts attempt to charge this defendant with knowingly accepting and receiving from a common carrier, a concession in respect of the transportation of property in interstate commerce, of the sum in said counts specified, whereby said property was transported at a rate and charge less than that lawfully established; (b) and with accepting and receiving a concession whereby a discrimination was practiced in favor of said defendant and against another corporation; all of which said defendant is ready to verify.

Wherefore, defendant prays judgment and that by the court it may be dismissed and discharged of said indictment.

Dated, Muskogee, Oklahoma, January 26, 1920.

JAMES B. DIGGS,

Attorney for Defendant,

FRANK M. SWACKER, of Counsel.

Tulsa, Oklahoma.

Endorsed: Filed Mar. 15, 1920. R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, on the same day, to-wit, the 15th day of March, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Order Overruling Demurrer.**

Now on this the 15th day of March, 1920, this cause comes on to be heard on the demurrer of the defendant, Gulf Refining Company, to the indictment heretofore returned against it, and the court after hearing and considering said demurrer, together with the argument of counsel thereon, and having taken the same under advisement, finds that said demurrer should be overruled.

It Is Therefore Ordered, Adjudged and Decreed that the said demurrer be and hereby is in all things overruled and denied; to which order, judgment and decree of the court the defendant, Gulf Refining Company, did then and there object and except.

R. L. WILLIAMS,

Judge of the U. S. District Court of  
the Eastern District of Oklahoma.

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And on the same day, to-wit, the 15th day of March, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Arraignment and Plea.**

Now comes the United States by the United States Attorney, and comes the defendant, Gulf Refining Company, by its attorney, Jas. B. Diggs, and on motion of the United States Attorney, it is ordered that the said defendant be arraigned upon the indictment herein. And thereupon the said defendant is duly arraigned and says for its plea that it is not guilty of the charges as contained in said indictment.

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And, to-wit, on the 10th day of April, A. D. 1920, the same being one of the days of the regular April 1920 Term of the United States District Court for the Eastern District of Oklahoma, court met pursuant to recess at Tulsa, Oklahoma. Present and presiding the Honorable R. L. WILLIAMS, Judge.

Among the proceedings had on this day is the following:

**Record of Trial, April 10, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the

Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and this cause coming on for trial, the following jurors are called by the clerk and sworn to answer questions touching their competency to serve as jurors upon the trial of this cause, and are examined, found qualified, accepted by the parties hereto, and sworn to try the issues joined herein:

W. D. Herndon, R. L. Loudermilk, W. A. Mayfield, W. L. Loftin, Ed McElderry, A. W. Murray, W. F. Featherston, Tom Baskin, James C. Bruton, Hugh Forehand, E. C. Dalquest, Count Dunaway.

And the jury is permitted to separate under instructions of the court until 2 o'clock P. M., Monday, April 12, 1920.

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And, to-wit, on the 12th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 12th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein, is called and all answer present except W. F. Featherston.

And upon agreement of the parties herein, it is ordered by the court that another juror be selected to complete the panel of said jury. And A. L. Hays is called and is sworn, examined and found qualified for service as a petit juror.

And thereupon the following jurors are called by the clerk and sworn to answer questions touching their competency to serve as jurors upon the trial of this cause, and are examined, found qualified, accepted by the parties hereto, and sworn to try the issues joined herein:

W. D. Herndon, R. L. Loudermilk, W. A. Mayfield, W. L. Loftin, Ed McElderry, A. W. Murray, Tom Baskin, J. C. Bruton, Hugh Forehand, E. C. Dalquest, Count Dunaway, A. L. Hays.

And the trial of this cause is resumed. And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9 o'clock A. M. tomorrow.

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And, to-wit, on the 13th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 13th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 14th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 14th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9 o'clock A. M. tomorrow.

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And, to-wit, on the 15th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 15th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 16th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 16th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 17th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 17th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. Monday.

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And, to-wit, on the 19th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 19th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants to the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker,

and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9:30 o'clock A. M. tomorrow.

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And, to-wit, on the 20th day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 20th, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 9 o'clock A. M. tomorrow.

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And, to-wit, on the 21st day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 21st, 1920.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs, and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 10 o'clock A. M. tomorrow.

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And, to-wit, on the 22nd day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 22nd, 1920.**

Now comes the United States by A. C. Chambers, J. Stan-

ley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And evidence having been introduced herein, the jury is permitted to separate under instructions of the court until 10 o'clock A. M. tomorrow.

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And, to-wit, on the 23rd day of April, A. D. 1920, the following proceedings were had in this cause, Honorable R. L. WILLIAMS, Judge presiding:

**Record of Trial, April 23rd, 1920—Verdict—Motion to Set Aside Verdict—Order Overruling Motion to Set Aside Verdict.**

Now comes the United States by A. C. Chambers, J. Stanley Payne and Edward E. Gann, Special Assistants of the Attorney General, and comes the defendant, Gulf Refining Company, by its attorneys, Jas. B. Diggs and Frank M. Swacker, and the jury heretofore empaneled and sworn to try the issues joined herein being present, the trial of this cause is resumed.

And the jury after hearing all the evidence introduced, the argument of counsel, and the instructions of the court, retires in charge of a sworn bailiff to consider of its verdict, and afterward returns into court with its verdict, which is as follows, to-wit:

We, the jury in the above entitled cause, duly impaneled and sworn, upon our oaths, find the defendant, Gulf Refining Company, ..... guilty, as charged in the first count of the indictment.

We further find the defendant ..... guilty, as charged in the second count of the indictment.

We further find the defendant ..... guilty as charged in the third count of the indictment.

We further find the defendant ..... guilty as charged in the fourth count of the indictment.

We further find the defendant ..... guilty as charged in the fifth count of the indictment.

We further find the defendant ..... guilty as charged in the sixth count of the indictment.

We further find the defendant ..... guilty as charged in the seventh count of the indictment.

We further find the defendant ..... guilty as charged in count eight of the indictment.

We further find the defendant ..... guilty as charged in count nine of the indictment.

We further find the defendant ..... guilty as charged in count ten of the indictment.

We further find the defendant ..... guilty as charged in count eleven of the indictment.

We further find the defendant ..... guilty as charged in count twelve of the indictment.

We further find the defendant ..... guilty as charged in count thirteen of the indictment.

We further find the defendant ..... guilty as charged in count fourteen of the indictment.

We further find the defendant ..... guilty as charged in count fifteen of the indictment.

We further find the defendant ..... guilty as charged in count sixteen of the indictment.

We further find the defendant ..... guilty as charged in count seventeen of the indictment.

We further find the defendant ..... guilty as charged in count eighteen of the indictment.

We further find the defendant ..... guilty as charged in count nineteen of the indictment.

We further find the defendant ..... guilty as charged in count twenty of the indictment.

We further find the defendant ..... guilty as charged in count twenty-one of the indictment.

We further find the defendant ..... guilty as charged in count twenty-two of the indictment.

We further find the defendant ..... guilty as charged in count twenty-three of the indictment.

We further find the defendant ..... guilty as charged in count twenty-four of the indictment.

We further find the defendant ..... guilty as charged in count twenty-five of the indictment.

We further find the defendant ..... guilty as charged in count twenty-six of the indictment.

We further find the defendant ..... guilty as charged in count twenty-seven of the indictment.

We further find the defendant ..... guilty as charged in count twenty-eight of the indictment.

We further find the defendant ..... guilty as charged in count twenty-nine of the indictment.

We further find the defendant ..... guilty as charged in count thirty of the indictment.

We further find the defendant ..... guilty as charged in count thirty-one of the indictment.

We further find the defendant ..... guilty as charged in count thirty-two of the indictment.

We further find the defendant ..... guilty as charged in count thirty-three of the indictment.

We further find the defendant ..... guilty as charged in count thirty-four of the indictment.

We further find the defendant ..... guilty as charged in count thirty-five of the indictment.

We further find the defendant ..... guilty as charged in count thirty-six of the indictment.

We further find the defendant ..... guilty as charged in count thirty-seven of the indictment.

We further find the defendant ..... guilty as charged in count thirty-eight of the indictment.

We further find the defendant ..... guilty as charged in count thirty-nine of the indictment.

We further find the defendant ..... guilty as charged in count forty of the indictment.

We further find the defendant ..... guilty as charged in count forty-one of the indictment.

We further find the defendant ..... guilty as charged in count forty-two of the indictment.

We further find the defendant ..... guilty as charged in count forty-three of the indictment.

We further find the defendant ..... guilty as charged in count forty-five of the indictment.



We further find the defendant ..... guilty as charged in count forty-six of the indictment.

We further find the defendant ..... guilty as charged in count forty-seven of the indictment.

We further find the defendant ..... guilty as charged in count forth-eight of the indictment.

We further find the defendant ..... guilty as charged in count forty-nine of the indictment.

We further find the defendant ..... guilty as charged in count fifty of the indictment.

We further find the defendant ..... guilty as charged in count fifty-one of the indictment.

We further find the defendant ..... guilty as charged in count fifty-two of the indictment.

We further find the defendant ..... guilty as charged in count fifty-three of the indictment.

We further find the defendant ..... guilty as charged in count fifty-four of the indictment.

We further find the defendant ..... guilty as charged in count fifty-five of the indictment.

We further find the defendant ..... guilty as charged in count fifty-six of the indictment.

We further find the defendant ..... guilty as charged in count fifty-seven of the indictment.

We further find the defendant ..... guilty as charged in count fifty-eight of the indictment.

We further find the defendant ..... guilty as charged in count fifty-nine of the indictment.

We further find the defendant ..... guilty as charged in count sixty of the indictment.

We further find the defendant ..... guilty as charged in count sixty-one of the indictment.

We further find the defendant ..... guilty as charged in count sixty-two of the indictment.

We further find the defendant ..... guilty as charged in count sixty-three of the indictment.

We further find the defendant ..... guilty as charged in count sixty-four of the indictment.

We further find the defendant ..... guilty as charged in count sixty-five of the indictment.

We further find the defendant ..... guilty as charged in county sixty-six of the indictment.

We further find the defendant ..... guilty as charged in count sixty-seven of the indictment.

We further find the defendant ..... guilty as charged in count sixty-eight of the indictment.

We further find the defendant ..... guilty as charged in count sixty-nine of the indictment.

We further find the defendant ..... guilty as charged in count seventy of the indictment.

We further find the defendant ..... guilty as charged in count seventy-one of the indictment.

We further find the defendant ..... guilty as charged in count seventy-two of the indictment.

We further find the defendant ..... guilty as charged in count seventy-three of the indictment.

We further find the defendant ..... guilty as charged in count seventy-four of the indictment.

We further find the defendant ..... guilty as charged in count seventy-five of the indictment.

We further find the defendant ..... guilty as charged in count seventy-six of the indictment.

We further find the defendant ..... guilty as charged in count seventy-seven of the indictment.

We further find the defendant ..... guilty as charged in count seventy-eight of the indictment.

We further find the defendant ..... guilty as charged in count seventy-nine of the indictment.

We further find the defendant ..... guilty as charged in count eighty of the indictment.

We further find the defendant ..... guilty as charged in count eighty-one of the indictment.

We further find the defendant ..... guilty as charged in count eighty-two of the indictment.

We further find the defendant ..... guilty as charged in count eighty-three of the indictment.

We further find the defendant ..... guilty as charged in count eighty-four of the indictment.

We further find the defendant ..... guilty as charged in count eighty-five of the indictment.

We further find the defendant ..... guilty as charged in count eighty-six of the indictment.

We further find the defendant ..... guilty as charged in count eighty-seven of the indictment.

We further find the defendant ..... guilty as charged in count eighty-eight of the indictment.

We further find the defendant ..... guilty as charged in count eighty-nine of the indictment.

We further find the defendant ..... guilty as charged in count ninety of the indictment.

We further find the defendant ..... guilty as charged in count ninety-one of the indictment.

We further find the defendant ..... guilty as charged in count ninety-two of the indictment.

We further find the defendant ..... guilty as charged in count ninety-three of the indictment.

We further find the defendant ..... guilty as charged in count ninety-four of the indictment.

We further find the defendant ..... guilty as charged in count ninety-five of the indictment.

We further find the defendant ..... guilty as charged in count ninety-six of the indictment.

We further find the defendant ..... guilty as charged in count ninety-seven of the indictment.

We further find the defendant ..... guilty as charged in count ninety-eight of the indictment.

We further find the defendant ..... guilty as charged in count ninety-nine of the indictment.

We further find the defendant ..... guilty as charged in count one hundred of the indictment.

W. L. LOFTIN, Foreman.

And thereupon the defendant by its counsel moves the court to set aside said verdict as to each count of the indictment. And the court having heard said motion and being suf-

ficiently advised in the premises, orders that said motion be, and it is hereby overruled, exceptions allowed.

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And on the same day, to-wit, the 23rd day of April, A. D. 1920, the defendant filed Motion for New Trial and Motion to transfer the cause to Muskogee for further proceedings, said Motion to Transfer being granted by the Court. Said Motion for New Trial, Motion to Transfer, and order granting Motion to Transfer are in words and figures as follows:

**Motion for New Trial.**

Comes now, the defendant, Gulf Refining Company, and moves the court to set aside, vacate and hold for naught, the verdict of the jury herein rendered against it on account of errors of law committed on the trial of said cause, to-wit:

First. On the ground and for the reason that the verdict of the jury so rendered against it, is contrary to law and the evidence.

Second. Because said verdict is against the evidence.

Third. Because said verdict is not reasonably supported by the evidence.

Fourth. For errors of law committed by the court on the trial of said cause, in admitting over the objection of the defendant, incompetent, irrelevant and immaterial evidence.

Fifth. For error of law committed on the trial of said cause in permitting evidence that the employees of the Gypsy Oil Company, Carter Oil Company, Smith & Chestnut Company, and Crosbie & Gillespie Company, and a large number of other companies, spoke of and referred to the products of said plants as gasoline, over the objection of said defendant.

Sixth. For error of law committed by the court on the trial of said cause in permitting the witnesses, E. J. League, Haigh and others, to testify as to the custom of the employees of casinghead producers and superintendents of plants, with which this defendant was in no wise connected, of speaking of and describing the casinghead gasoline produced at said plants, by the name of gasoline, over the objection and exception of this defendant.

Seventh. For error of law committed by the court on the trial of said cause, in permitting evidence of the fact that casinghead producers with whom this defendant was in no

wise connected, shipped and described in their shipping orders and bills of lading, the products of their casinghead gasoline plants, as gasoline, over the objection and exception of this defendant.

Eighth. For error of law committed by the court in permitting evidence to be given that casinghead producers shipped their product over routes and between points other than those named in the indictment, as gasoline, in the absence of a showing that the same was shipped under the identical or similar circumstances, or so shipped and described with the knowledge of this defendant, over the objection and exception of this defendant.

Ninth. The court committed error of law in permitting evidence of the practice of superintendents of casinghead gas plants, and the employees of such plants, as to the manner of shipping and describing the products of such plants, it appearing that said shipments were made to points other than those mentioned in the indictment and made to refineries, over the objection and exception of this defendant, for the reason that said evidence is hearsay as to this defendant, being transactions between persons with whom it was in no way connected, same not shown to be known to this defendant, and not to have been shipped under similar circumstances and conditions under which the products shipped by the Gypsy Oil Company to this defendant were shipped, and not shown to be shipped over routes and between points where there existed a tariff or rate on unrefined naphtha.

Tenth. For error of law committed by the court on the trial of said cause in permitting to be introduced in evidence, to the jury, over the objection and exception of this defendant, Government's Exhibits Nos. 66, 67, 68, 69, 77, 78, 79, 86, 87, 88, 95, 98, 100 to 106, inclusive; and also Government Exhibits Nos. 110 to 117 inclusive; also Government Exhibits Nos. 135, 136 and 138; also Government Exhibits Nos. 120 to 134 inclusive; also Government Exhibits 10, 11, 12, 13 and 14, and the tabulated statement checked by witness Otey, No. ...., on the ground that the same were incompetent, irrelevant and immaterial to any issues in this cause.

Eleventh. For error of law committed by the court in overruling the motion of the defendant to strike from the record the evidence that employees of casinghead gasoline plants in Oklahoma, called the product produced by them, gasoline, and the evidence of A. W. Barnhart, J. W. Freeman and other witnesses named and set out in said motion, showing the practice of the superintendents of casinghead plants, and

the employees thereof, calling the product of said plants gasoline, to which action of the court, the defendant then and there objected to and excepted.

Twelfth. For error of law committed by the court on the trial of said cause in permitting the introduction of that portion of the evidence of the government's, which was subsequently stricken out on motion of this defendant, for the reason and on the ground that the same is incompetent, irrelevant and immaterial, and the improper admission of such evidence being prejudicial to this defendant, and to the introduction of which evidence this defendant at the time objected and excepted.

Thirteenth. For error of law committed by the court on the trial of said cause in refusing defendant's motion to instruct the jury to bring in a verdict of not guilty, to which action of the court the defendant at the time excepted.

Fourteenth. For error of law committed by the court on the trial of said cause in refusing the motion of defendant to dismiss said cause on the ground of want of jurisdiction of the court to hear and determine the same, and that it appeared from the evidence in the case that there was involved the construction of the tariffs, and that such construction was necessary in order to determine whether casinghead gasoline was included within the meaning of gasoline, as such word was used in the tariffs, the determination of which question is by law vested solely in the Interstate Commerce Commission, to which action of the court the defendant then and there excepted.

Fifteenth. For error of law committed by the court on the trial of said cause in refusing to instruct the jury that a material variance between the allegations of the indictment and the evidence existed, and therefore the jury should bring in a verdict of not guilty on such account, to which action and order of the court the defendant then and there excepted.

Sixteenth. For error of law committed by the court in permitting the introduction of evidence to the effect that there were rates in force after December 28, 1917, governing the transportation of gasoline, whereas, there was no showing that such rates had been lawfully published and filed, or adopted by the Director General of Railroads, in accordance with the statute and the orders of the Interstate Commerce Commission affecting such publication, filing and adoption, to which the defendant then and there excepted.

Seventeenth. For error of law committed in the course of said trial by the attorneys for the government, consisting



in improper comment in summing up, to the effect that the United States was pecuniarily interested in the outcome of said trial, and in making improper comments upon the wealth of the defendant and in making improper comments to the effect that the defendant had violated the safe transportation regulations, notwithstanding the judicial admission of the government to the contrary; this defendant not being on trial on a charge of defrauding the United States, or of violating such safe transportation regulations, and such comment being highly prejudicial and calculated to inflame the jury, and such comment having been excepted to by the complainant.

Eighteenth. For error of law committed by the court in instructing the jury that there were lawfully established, published and filed rates governing the transportation of gasoline subsequent to December 28, 1917, the evidence showing no publication, filing or adoption thereof in the manner and form provided by law, to which the defendant was allowed to except.

Nineteenth. For error of law committed by the court in charging the jury that they could look to the rules and regulations governing the safe transportation of explosives and other dangerous articles for the purpose of determining or assisting them in determining, the meaning of the term gasoline, said regulations being no part of, and having nothing to do with the rate regulations and classification governing freight rates, to which charge of the court, the defendant was, by the court, permitted to save an exception.

Twentieth. For error of law committed by the court in its general charge to the jury, that articles shipped in Interstate Commerce, should be billed and designated by the name which it is generally called, and if such article is generally used in commerce its commercial name should be given, and that if an article generally used in commerce its commercial name should be used, that is, the name by which it is used in commerce. If the article is not an article generally used in commerce and has no commercial name, then the jury should look to its manufacture and look to those who sell and buy it, to see how it is called, the law being that tariffs named freight rates, are to be strictly construed with respect to the proper technical designation of the article.

Twenty-first. For error of law committed by the court in refusing special instructions of the defendant Nos. 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 19, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35, and 36, to which action of the court the defendant then and there did except.

Twenty-second. For error of law committed by the court in refusing to give as requested, or in substance, special instructions Nos. 2, 5, 13, 16, 18, 20, 29, 30 and 31, to which action of the court the defendant at the time did except.

JAMES B. DIGGS,

FRANK M. SWACKER,

R. L. BUTTS,

JOHN E. GREEN, JR.,

T. C. HUMPHRY,

Attorneys.

Endorsed: Filed Apr. 23, 1920. R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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#### **Motion to Transfer.**

Comes now, the defendant, Gulf Refining Company, and moves the Court to transfer this cause to Muskogee for further proceedings.

JAMES B. DIGGS,

R. L. BUTTS,

F. M. SWACKER,

JOHN E. GREEN, JR.,

T. C. HUMPHRY,

Attorneys for Defendant.

Endorsed: Filed Apr. 23, 1920. R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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#### **Order Granting Motion to Transfer.**

Now, on this, the 23rd day of April, 1920, this cause coming on for further hearing on the motion of the defendant, Gulf Refining Company, that the same be transferred to Muskogee for further proceedings, the court, after hearing and considering said motion, finds the same should be granted, and it is therefore, ordered, adjudged and decreed, that this cause be, and the same hereby is transferred to Muskogee for such further proceedings as may be had therein.

R. L. WILLIAMS, Judge.

Endorsed: Filed Apr. 23, 1920. R. P. Harrison, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 10th day of January, A. D. 1920, the defendant filed motion in arrest of judgment, which is in words and figures as follows:

**Motion in Arrest of Judgment.**

Comes now the defendant, Gulf Refining Company, by its attorneys, and moves the court to arrest judgment against it upon each count of the indictment upon the following grounds:

1. Because the pretended indictment herein is not a true bill voted by the grand jury in accordance with law, as set forth in defendant's motion to strike the same from the records of the court and its plea in abatement duly filed and forming part of the record herein.

2. Because the matters and things set forth and charged do not constitute an offense against the laws of the United States.

3. Because the averments of each count of said indictment are too general, vague, indefinite and uncertain to inform the defendant of the nature and cause of the accusation against it, or apprise it with such reasonable certainty of the offense with which it is charged or what it may expect to meet on the trial so as to enable it to make its defense.

4. Because the averments of each count of said indictment are so vague, indefinite and uncertain, consisting in the pleader's conclusion as to what constitutes a concession, that the court is unable to say as a matter of law whether the acts of defendant constitute an offense against the United States.

5. Because the admissions of the plaintiff and the uncontroverted evidence show that there is involved a controversy as to the legal construction and application of purpose, of which character of controversy this court has no jurisdiction.

And as to Counts 36 to 40, inclusive, and 81 to 85, inclusive, because the said counts are bad for duplicity, in that each of said counts there is attempted to be charged two separate and distinct offenses.

JAMES B. DIGGS,

FRANK M. SWACKER,

Attorneys for Defendants.

Endorsed: Filed Jan. 10, 1921, W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And on the same day, to-wit, January 10, 1921, Journal Entry was filed, which is in words and figures as follows:

**Journal Entry: Order Overruling Motion for New Trial, Order Overruling Motion in Arrest of Judgment, and Judgment and Sentence.**

Now, on this the 10th day of January, 1921, the same being a regular juridical day of the January Term, 1921, of the District Court of the United States for the Eastern District of Oklahoma, this cause comes to be further heard on the motion of the defendant, Gulf Refining Company, for a new trial herein, and the United States being present by its attorneys, C. W. Miller, United States District Attorney of the Eastern District of Oklahoma, and J. Stanley Payne, Special Assistant to the Attorney General, and the defendant being present by James B. Diggs and Frank M. Swacker, its attorneys, the court doth proceed to hear and determine said motion. And the court, after hearing and considering the same, and being fully advised in the premises, finds that said motion should be overruled.

It Is, Therefore, Ordered, Adjudged and Decree that the said motion for new trial be, and the same hereby is in all things disallowed and overruled, to which judgment and action of the court the defendant did then and there object and except.

And thereupon, the United States, by its said attorneys, moved the court for judgment and sentence on the verdict of the jury heretofore returned in said cause, and the defendant, being asked if it had anything to say why judgment should not now be pronounced against it, presents its motion in arrest of judgment stating the grounds on which judgment should not be rendered and entered against it in said above styled cause, and the court, after hearing and considering said motion in arrest of judgment and being fully advised in the premises, finds said motion should be overruled;

It Is, Therefore, Ordered, Adjudged and Decreed that the defendant's said motion in arrest of judgment be and the same hereby is in all things disallowed and overruled, to which action, judgment and order of the court the defendant did then and there object and except, and thereupon the defendant having no more to say than it hath heretofore said as to why judg-

ment should not be pronounced against it, the court doth proceed to enter judgment and pronounce sentence on the verdict of guilty heretofore rendered by the jury in said cause; and the court after considering the same and being fully advised in the premises, finds that there is no just reason why the verdict of guilty heretofore rendered in said cause, should not be sustained and approved and judgment entered thereon.

It Is, Therefore, Ordered, Adjudged and Decreed that said verdict of guilty so rendered by the jury, as aforesaid, be in all things sustained and approved, and that judgment of guilty and sentence be now entered on the records of this court in conformity with the verdict of said jury.

It Is, Therefore, by the Court Ordered, Adjudged and Decreed that the defendant be, and it hereby is declared guilty on the ninety-nine counts in said indictment as returned by the jury as aforesaid, and the United States, stating in open court that it knows no reason why defendant should be fined and judgment entered against it for more than the minimum fine, fixed by law,

It Is, Therefore, Further Ordered, Adjudged and Decreed by the court that the defendant, Gulf Refining Company, be, and hereby is fined in the sum of One Thousand Dollars (\$1,000.00) on each of the ninety-nine counts set out and contained in said indictment, and that the United States have and recover of said defendant the aggregate sum of Ninety Nine Thousand (\$99,000.00) Dollars, the same being One Thousand (\$1,000.00) Dollars on each count in said indictment, together with the costs of this suit, for which let execution issue as provided by law, unless within ten days from this date, the defendant files with the Clerk of this Court a supersedeas bond superseding this judgment, approved by the Judge of this Court.

R. L. WILLIAMS,

Judge of the District Court  
of the United States for the  
Eastern District of Oklahoma.

Endorsed: Filed Jan. 10, 1921, W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 10th day of January, A. D. 1921, the defendant, Gulf Pipe Line Company, filed its bill of exceptions, which is in words and figures as follows:

IN THE DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF OKLAHOMA.

*UNITED STATES OF AMERICA, Plaintiff,*  
*against*

*GULF REFINING COMPANY, Defendant.*

No. 3716. Criminal.

**Defendant's Bill of Exceptions.**

Filed January 10, 1920.

**Appearances:**

E. E. Gann, Esq.,  
T. G. Chambers, Esq.,  
J. S. Payne, Esq., for Plaintiff.

James B. Diggs, Esq.,  
Frank M. Swacker, Esq.,  
R. L. Batts, Esq.,  
John E. Green, Jr., Esq.,  
T. C. Humphry, Esq., for Defendant.

*Be It Remembered*, that at the ... December .... Term of this court, A. D. 1919, before pleading to said indictment, upon leave of court, the defendant filed a written motion, which is a part of the record in this case, for the court to strike from its record the pretended indictment herein, for that the same was not a true bill voted by the Grand Jury in accordance with law, which motion was in words as follows:

**MOTION TO QUASH AND SET ASIDE.**

Comes now the Gulf Refining Company, by its attorneys, one of the defendants in the above entitled cause, and moves the court to quash, set aside, vacate and hold for naught the pretended indictment found and returned in this cause against it, on the following ground:

That said indictment is not an indictment found and returned by the Grand Jury, in this, that said indictment was not read to the Grand Jury before its return into this court,



nor was the same read by said Grand Jury, and said Grand Jury did not know the contents thereof.

JAMES B. DIGGS,  
RUSH GREENSLADE,  
W. C. LIEDTKE,  
*Attorneys for Defendant.*

JAMES B. DIGGS being duly sworn on oath, says that the matters of fact above set (forth) are true as he verily believes.

JAMES B. DIGGS.

Subscribed and sworn to before me this 8th day of December, 1919.

R. P. HARRISON, Clerk,  
By E. H. HUBBARD, Deputy.

(Seal U. S. Dist. Court.)

Endorsed: Filed, Dec. 8, 1919, R. P. Harrison, Clerk,  
United States District Court.

And the foregoing verified motion was all the evidence given upon the hearing of said motion, and the statements therein contained were not denied by the plaintiff.

And the defendant asked leave to call witnesses to prove the statements therein contained, which the court refused to permit, to which the defendant then and there duly excepted.

And after hearing argument upon said motion, the court denied and overruled the same, to which the defendant then and there duly excepted.

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*Be It Also Remembered* that on the trial of the above entitled cause, in this court, begun on April 10, 1920, at the March Term 1920, before the Honorable R. L. Williams, District Judge, presiding, and a jury, the following proceedings were had, to-wit:

A jury was selected satisfactory to both parties and duly sworn to try said case.

MR. J. S. PAYNE opened on behalf of the United States of America, in the course of which he made, among others, the following statements, upon which the defendant then and there moved the court to instruct the verdict of acquittal for it, which motion was by the court overruled, to which ruling the defendant then and there duly excepted:

By Mr. Payne: May it please the Court and gentlemen of the jury: The defendant in this case is charged with violating an Act of Congress originally passed in 1887 and as amended from time to time, eventually by what is known as the Elkins Act, in 1903. His Honor from the bench will instruct you at the end of the case with reference to the law as it applies to the particular facts as brought out in the evidence.

\* \* \* \* \*

Mr. Payne: Gentlemen the indictment is in one hundred counts and charges the Gulf Refining Company with accepting concessions from the lawfully established tariffs rates on shipments of gasoline from three points in Oklahoma, Kiefer, Jenks, and Drumright to Port Arthur in the State of Texas. I will read the first count in the indictment: (Reads first count).

Each of the remaining counts in the indictment allege a similar transportation and a similar concession, except that in certain of the counts it is alleged that other shippers shipped the same commodity between the same points and paid the lawful rate, so that there was a discrimination in favor of this Company and against the other companies whereby this Company got an advantage in freight rate. You will note that in the indictment the Gypsy Oil Company was the shipper and the Gulf Refining Company was the consignee. We will show that those two companies are affiliated companies and that those two companies and the Gulf Pipe Line Company are owned, that is all their capital stock, except the directors' shares, three shares, are owned by the Gulf Oil Company, the Gypsy Oil Company, Gulf Pipe Line Company and Gulf Refining Company. The Gypsy Oil Company in reality being the producing department, the Pipe Line Company pipes the crude oil from Oklahoma down to Port Arthur where the refinery of the Gulf Refining Company is located.

"Now it will be observed that the indictment charges that what was shipped was gasoline. Now as it is a common knowledge there are two kinds of gasoline. That which is usually refined as crude oil in a refinery, and the other is casinghead gasoline made by the compression of gas escaping from an oil well. Now in this case what was shipped was casinghead gasoline. This casinghead gasoline was produced by the gasoline department of the Gypsy Oil Company. They run a separate department for their gasoline and it is distinct from the producing of

crude oil. The Gypsy Oil Company operate casinghead gasoline plant- at Kiefer and Jenks and Drumright. Now these casinghead gasoline plants are always located near where the oil wells are as the casinghead gas is manufactured from the gas that flows out of oil wells and this gas is brought up out of the well through a vacuum process, and it is piped to the nearby casinghead plant where it is compressed into gasoline. The gas in the oil well is really the evaporation of the gasoline contained in the crude oil and the gas is formed through natural processes and by a process of compression and refrigeration you get the gasoline out of it. The crude oil produced by the Gypsy Oil Company is sent down to Port Arthur through the pipe line. We will show that this same thing shipped by rail in tank cars was casinghead gasoline. Now the plant at Kiefer of the Gypsy Oil Company was erected in 1913, the casinghead gasoline plant, and they started shipping their gasoline principally to Port Arthur and they shipped it as gasoline and paid the gasoline rate as they should have, and it was continued to be so shipped from that time up until December 2, 1916. At that time and on that date a tariff rate on unrefined naphtha became effective from Kiefer to Port Arthur and thereafter the Gypsy Oil Company described their shipments of gasoline as unrefined naphtha for the purpose of getting the rate on unrefined naphtha, which was 19½ cents, and in that way they secured the transportation of their gasoline at a rate that was 13½ cents less than the tariff rate which the other shippers paid. The casinghead gasoline plant of the Gypsy Oil Company at Jenks was built in the early part of 1917, and the casinghead plant at Drumright was opened shortly thereafter. As I said, the only thing that is shipped from these three points in tank cars is this casinghead gasoline.

“Casinghead gasoline has become a very well known commodity. In the year 1917 there were nearly 200,000,000 gallons of it produced if I remember the figures correctly. These casinghead plants as I mention get the gasoline from the gas by the process of compression and refrigeration and the principle of it is the same *was* water is precipitated on the outside of a glass containing ice water and beads of water formed on the glass. The warm air coming in contact with the cold air causes that precipitation and in that same way they get the liquid from the gas and the liquid is gasoline. However, it is a very high gravity gasoline; it is a very high grade of gasoline too. Nearly always clear and water-white and it is likely to be

quite volatile and if allowed to stand it will evaporate very rapidly. In order to give this gasoline more body it is usually blended with refined naphtha. Now the naphtha that the Gypsy people use for blending at Kiefer and Drumright is shipped from the refinery at Port Arthur to Kiefer in tank cars. When the naphtha arrives at Kiefer and at Drumright it is put in storage tanks and there blended with the casinghead gasoline and then reshipped. The product is gasoline blending this casinghead gasoline with naphtha or kerosene and with either of them you get a gasoline. The gasoline that is shipped from Jenks is undiluted. The gas there is rather lean gas and it does not need blending at that point. Now I might say that the blending that takes place at Kiefer and Drumright is not a full blending. It is blended so that the gravity is from 74 to 78. They have to blend it down in order to ship it in tank cars because there is a rule in the classification that casinghead gasoline either undiluted or blended cannot be shipped in the ordinary tank car unless its vapor tension is ten pounds or less. That means the gas confined in a car naturally has a tension and that tension must not be more than ten pounds per inch. It cannot be shipped in ordinary tank cars but must be shipped in insulated cars. Now the tariff provides that where the vapor pressure is more than ten pounds it can be shipped only as liquefied petroleum gas, which simply means the gas of petroleum wells which has been liquefied. Now the rate on liquefied petroleum gas from Kiefer and Drumright was just as high as the rate on gasoline. The tariff also said that where the vapor pressure is less than ten pounds it might be shipped as gasoline so that in either event it had to be shipped as gasoline or liquefied petroleum gas and in either event it would take a rate as high or higher than gasoline. Now the rate on gasoline from Jenks to Port Arthur was 39 cents as was also the rate on petroleum liquid gas and also naphtha and also gasoline, each a refined petroleum product; and the rate on unrefined naphtha from Jenks to Port Arthur was 19 and one-half cents, so that as we claim by the false billings of these shipments of gasoline as unrefined naphtha they were able to get a rate that was almost half, nearly half less than they should have paid. They just cut the rate in two. The rate on refined products from Drumright was 40 cents and the rate on unrefined naphtha was 21 and one-half cents. The tariff makes those two distinctions. They have a certain rate on unrefined oils and another on refined products. So in this case the scheme was to misdescribe this refined prod-

uct as an unrefined product in order to get a lower rate. Now you will hear some testimony about the difference between gasoline and naphtha and all that, but the distinction in this case will be whether this was a refined product and whether it was an unrefined product. Casinghead gasoline is a highly refined product; it is refined by the processes of nature in the earth and when it comes to the surface it only needs to be liquefied in order to produce a pure high grade gasoline. Now where the shipments are blended as they were at Kiefer and Drumright, they are blended with a naphtha that has been refined as much as refineries can refine it. Naphtha is produced by a distillation of crude oil, put through the stills, through the agitators and through the steam stills. It is washed and given the acid treatment and produces a water colored refined liquid. Now the blending of those products together could not possibly make an unrefined product so as to take the unrefined rate. I forgot to mention that the same purpose can be secured by what they call weathering as by blending. Weathering simply means putting some of this gasoline out and letting some of the vapor escape into the atmosphere. Now gentlemen we will show that these shipments were inspected while in transit by inspectors of the bureau of explosives, men who make a business of inspecting casinghead gasoline. And they will testify—

“By the Court: Now what is the use of going into all of that detail on a statement to the jury? It looks to me like now here it is the contention of the Government that they shipped this stuff at this rate. They claim it is unrefined naphtha and you claim it ain't. Now that is all detail. Now I am going to close this case on April 24th. I have cases set on April 26th so if you are aiming to get through with it there is no use taking up time in these statements—

“By Mr. Payne: Alright this can be taken up by the witnesses.

“By the Court: They will understand it. These men won't understand what you tell them now. It is the contention of the government it was shipped at a less rate than the fixed rate, published rate and that they shipped it as unrefined naphtha when it ought not to have been shipped that way. That is the contention and that is the point to keep in mind.

“By Mr. Payne: Alright your Honor. Just one further fact I want to mention. That is the period covered by the indictment is from December 2, 1916, and as every-

one knows that the railroads were under the Government control and the full government rate was due to the Government and the transportation of these shipments at an essentially lower rate than the legally applicable tariff rate was taking money out of the Federal Treasury and a very large sum of it. Thank you, Your Honor.

"By the Court: Proceed with the defense.

"By Mr. Diggs: If the Court please the defendant moves the Court to instruct the jury to bring in a verdict in favor of the defendant on the statement of the counsel for the Government.

"By the Court: I will overrule the motion.

"By Mr. Diggs: To the overruling of the motion defendant excepts."

Thereupon the plaintiff dismissed the Count Numbered 44 of the indictment.

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And thereupon Mr. DIGGS opened for the defense.

And thereafter, the following further proceedings were had:

Mr. Payne: Your Honor, at this time I wish to offer the stipulation between counsel.

Judge Williams: Call your first witness, let's get the witnesses sworn.

Mr. Payne: We have excused a great many until tomorrow morning—we can call all that are here.

By the Court: Very well, go ahead.

Mr. Payne: Shall I read this, Your Honor?

By the Court: Yes, proceed.

Mr. Payne: United States of America,—

Mr. Diggs: What stipulation are you offering?

Mr. Payne: The stipulation you signed. We offer this as plaintiff's Exhibit 1.

Mr. Diggs: If the court please, we admit the facts stated in the stipulation, but object to it going to the jury on the grounds it is incompetent and immaterial, and object especially as to Paragraph 2.

The Court: I will admit this subject to objection. I suppose it is their contention that they will connect this and make it competent, so I will admit it subject to your objection, and before the case is closed then I will pass



on your objection. You can just consider it read. That is technical evidence and that may be filed and considered read to the jury.

The Court: You had better call the witnesses because the rule may be invoked in this case. Call all the witnesses that are here in the court room. Proceed.

(All witnesses for the Government were asked to stand up and about forty stood up.)

The Court: All the witnesses will remain out of the court room but within call.

Mr. Diggs: Now your honor we suppose the rule would not include witnesses who are expert witnesses.

Mr. Payne: We will agree that the expert witnesses may remain in the court room.

The Court: All the defendant's witnesses may retire outside and in the morning you may bring a list of your witnesses up and I will pass on them then.

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Thereupon J. M. SCOTT, being called as a witness on behalf of the United States and being duly sworn and examined testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your position please?

A. I am inspector for the Bureau of Explosives.

Q. As inspector for the Bureau of Explosives, Mr. Scott, what are your duties?

A. To inspect the manufacture and shipping of explosives and other dangerous articles, such articles as inflammable articles and gases.

Q. How long have you been an inspector of the Bureau of Explosives? A. Since October 23, 1907.

Q. And you still hold that position? A. Yes, sir.

Q. During that period of nearly thirteen years have you had occasion to inspect shipments of casinghead gasoline?

A. Yes, sir.

Q. Have you inspected many of such shipments?

A. Quite a good many, sir.

Q. Can you state about how many?

A. Do you have reference to tank car shipments?

Q. Yes. A. Three or four hundred.

Q. Mr. Scott, can you tell casinghead gasoline by a mere examination of it?

Mr. Swacker: We object, it is irrelevant and immaterial, whether this witness can tell it or not.

Mr. Diggs: It is incompetent, irrelevant and immaterial, and the knowledge of the witness as to the two characters of gasoline has not been shown.

The Court: I would like to hear brought out the further predicate as to the qualifications.

Q. You may answer the question?

A. If I can tell casinghead gasoline?

Q. Yes. A. Unblended or blended?

Q. Either, take unblended first? A. Yes, sir.

The Court: What do you mean by unblended gasoline?

A. What the producers call high stuff; that is not blended with the lower material.

The Court: What do you mean by a lower material?

A. Such material as some refined products, as frequently used, coal oil, naphtha.

The Court: You call that—well, go head, proceed in your own way of examining him.

Q. How can you tell, Mr. Scott, whether a particular car of which you have not seen the billing is undiluted casinghead gasoline or not. A. By the vapor tension.

Q. What are the characteristics of casinghead gasoline in reference to vapor tension?

A. The vapor tension is higher.

Mr. Diggs: We object as incompetent, irrelevant and immaterial, and the competency of the witness as an expert has not been shown.

The Court: What position do you hold?

A. Inspector for the Bureau of Explosives.

The Court: How long have you been inspector?

A. Since October 23, 1907.

The Court: 1907?

A. Yes, sir.

The Court: Now what qualifications did you have to fit you for that place; what experience did you have to fit you for that place?

A. I was accepted by the Chief Inspector as being competent to fill the position.

The Court: Well, what training did you have to fit you for that?

Mr. Payne: May I interrupt Your Honor? We are not qualifying Mr. Scott as an expert, but a witness to express opinions on facts. Here is a man that deals with these things all along.

The Court: I don't see how he could unless he understood it.

Mr. Payne: I was trying to bring out that he can tell from an examination of it whether it is casinghead gasoline, because casinghead has certain characteristics different from other oils.

The Court: Well, if he knows from his experience as a physical fact, he can look at casinghead gasoline and tell it from other kinds, just like a man could go and say this is a red horse and this is a white horse, he can say that.

Mr. Diggs: That is not the question, Your Honor.

Mr. Payne: I am qualifying him, if he can tell?

The Court: I will not permit him to testify that. I will permit him to testify he has examined that car and tell what it was, if he knows. Now if you are going into the domain, the characteristics and so on you will have to show he is an expert, and you admit he is not an expert.

Mr. Payne: He can tell by a good many different things, the smell and vapor tension, and other tests.

The Court: No, you have admitted he is not an expert. I will sustain the objection.

Mr. Payne: Your Honor, I want to suggest we are qualifying him as a man in this business.

The Court: No, you have admitted he is not an expert, and unless you can show me some authority that a man that is a non-expert, that he can testify as to characteristics of matters where it takes expert knowledge, I will hear you.

Mr. Payne: That is the physical characteristics, Your Honor.

The Court: Now you may prove that by experts.

Mr. Payne: I don't like to make this statement in front of the jury, but I want to bring out by this witness that he has been at the plant at Kiefer and knows it is a casinghead plant, and they haven't any machinery down there to produce anything else.

The Court: Well that is not what you tried to prove by him at all. If you want to show that you may open up that field.

Mr. Diggs: We don't deny this is a casinghead gasoline plant and this is the only kind of stuff we produce there.

The Court: Very well, let him go ahead and offer what you want to prove by him, the physical facts and I will pass on that.

Q. Mr. Scott, have you been to the plant of the Gypsy Oil Company, gasoline department, at Kiefer, Oklahoma?

A. Yes, sir.

Q. When was your first visit there, Mr. Scott, when was the first time that you saw the plant, that plant at Kiefer?

A. Approximately in the——

Judge Williams: About when?

A. About the summer I think of 1916.

Q. Have you been there since. A. Yes, sir.

Q. Now what did you do there when you went there in the summer of 1916?

A. We went through the plant with the superintendent.

Mr. Diggs: We object as incompetent, irrelevant and immaterial.

By the Court: I suppose you want to find out what he saw when he went there?

Mr. Payne: Yes, sir.

The Court: Now what did you see when you went there?

A. I saw the plant.

Q. What kind of a plant is it?

A. Casinghead gasoline plant.

Q. Of what type, whether compression or absorption?

A. Compression of casinghead gasoline.

Q. Did you see some of the gasoline that was produced there? A. Yes, sir.

Q. What was its nature? What was it? What was the product of that plant?

A. Known as casinghead gasoline.

Q. Does the Gypsy Oil Company at Kiefer have stills of any kind whereby crude oil is refined?

A. Never saw any?

The Court: Well you know whether they were there or not. Did you make investigations enough.

A. I went entirely over the plant and did not find any stills.

Mr. Diggs: If the Court please, in order to save time we have said that we admit this is a compression casinghead gasoline plant.

Mr. Payne: Do you also admit that it is not unrefined naphtha?

Mr. Diggs: No, sir. All these plants described in the indictments are compression plants. They are casing-head gasoline plants.

The Court: Go ahead.

Q. When were you there next, Mr. Scott?

A. Sometimes in the spring or summer of 1917, I think.

Q. Did you go through the plant at that time, did you make any inspection? A. Yes, sir.

Q. And you found them producing the same thing?

A. Yes, sir.

Q. And did you find them producing the same thing?

A. Yes, sir.

Q. When were you next there, the approximate date?

A. May, I think I can call the exact date, May 11th, 1918.

Q. When were you next there? A. December, 1919.

Q. Was that the last visit?

A. That was the last time I was there.

By the Court: It looks to me like under the admission of the defendant the issues are very simple, they claim they just that casinghead gasoline is unrefined naphtha. That is the way I understand it, that seems to be the issue in the case.

By Mr. Payne: We will show and I think we will be compelled under the issue to show that casinghead gasoline is not an unrefined product.

By the Court: That is true but they say it is unrefined naphtha why not direct your evidence to that. They don't deny the shipments. I noticed they did not deny the shipments alleged in the indictment. They don't deny when it was shipped.

By Mr. Payne: They don't admit it.

By the Court: For the purposes when they come in here and take the attitude here shown they admit.

By Mr. Payne: They admit it is a corporation but not the shipments.

By the Court: Under the theory of their statement to the just it operates practically as an admission that they made the shipments but they claim they are not in violation of the law. That is the way I understand the case.

By Mr. Payne: If that is the admission that is going to be made why not put it down formally in writing.

By the Court: These statements are in the record and they are bound by the statements of counsel what they say. What I understand counsel to say is they do not deny but they admit those shipments.

By Mr. Payne: They admit they had the casinghead gasoline plant but I do not recall any reference to any shipment.

By the Court: I will take care of that. I will take care of the record on that. My understanding is the contention is that when they ship the casinghead gasoline as unrefined naphtha they shipped it as unrefined naphtha and that is in accordance with the tariff sheet. Is that correct?

By Mr. Diggs: Yes, sir.

By Mr. Payne: It will be necessary for us to show it is not an unrefined naphtha.

By the Court: That looks to me like that is all there is in the case.

By Mr. Payne: That is the heart of the case.

By the Court: That is all of it under their admission I will put in the record that under their admission made in open court that is the only issue in the case and you can direct your evidence to that.

Q. Mr. Scott, was there any change in the method of doing business in the plant from the time you went there first in May, 1916, and until the time you were there last in December, 1919?

By Mr. Swacker: I object as being incompetent, irrelevant and immaterial as to December, 1919—about that date it is without the issue in the indictment, the last transaction alleged in the indictment is May 31st, 1919, March 18th, in fact.

By the Court: I will not let them prove that.

By Mr. Payne: He was there at that time and I want to show there was no change in the plant during the period he was there, no change in the last time that he was there and the last time stated in the indictment.

By Mr. Swacker: There were a great many changes, if we have to go into that—

By the Court: Now it seems to me like to me under the admissions—they admit they made the shipments as alleged, they say, they shipped this casinghead gasoline as unrefined naphtha and that it is unrefined naphtha as



the term is used in the rate sheet. Now you can level your proof to show that it is not unrefined naphtha.

By Mr. Payne: Your Honor, we are attempting now to show that they haven't the machinery or appliances there whereby they can produce unrefined naphtha.

By the Court: Why that is immaterial. They admit they didn't make anything. They had casinghead gasoline.

By Mr. Payne: Is that the admission?

By Mr. Swacker: There is no pretense we do anything to unrefine it—machinery would involve refining it.

By the Court: You take it out of oil as I understand.

By Mr. Payne: Take it from the gas.

By the Court: From the gas?

By Mr. Payne: Yes.

By the Court: I think it is part of the oil.

By Mr. Payne: As it comes out of the well it is a gas. Now the crude oil is piped away to Port Arthur.

By the Court: This casinghead comes out of oil wells.

By Mr. Payne: It surely originates in the bowels of the earth, when it comes to the surface it is in the shape of gas and that is compressed and liquefied.

By the Court: Now the thing to do is to show that that is not unrefined naphtha.

By Mr. Swacker: We don't dispute, we have nothing there but a casinghead plant and our contention is that they cannot prove it is a product which has been unrefined. We wouldn't have any object in unrefining it of course.

By Mr. Payne: We want to show——

By Mr. Swacker: We concede we have nothing there but a casinghead plant.

By Mr. Payne: Of course, we have lots of evidence to prove it. We will show that naphtha and unrefined naphtha as those terms are used in the tariff and in the trade generally are produced by the distillation of crude oil in stills and that they have no stills at Kiefer.

By the Court: I understand they admit they have no stills there.

By Mr. Swacker: Certainly.

By Mr. Payne: In view of the admission the witness is excused.

(Witness excused)

By the Court: Very well, call your next witness.

By Mr. Swacker: Our contention is we take it to Port Aruthur for the purpose of refining it or finishing it.

By Mr. Payne: That is argument, that will come later?

Whereupon, J. H. RIEDEMAN, produced, sworn and examined as a witness, on behalf of the United States, testified as follows:

*Direct Examination of Mr. Riedeman by Mr. Payne.*

Q. Mr. Riedeman, were you ever employed by the Gypsy Oil Company, gasoline department at Kiefer? A. I was.

Q. What were the dates of your employment there?

A. I went to work for the Gypsy in September, 1916, and quit in September, 1918, as near as I remember.

By Mr. Payne: May it please the court in view of the refusal of the defendant to stipulate that the shipments were transported we feel that it is necessary to prove it unless the defendants intend to admit it.

By the Court: Let me have the indictment. Now they admit that the scheduled rates were fixed as alleged in the indictment.

By Mr. Swacker: There is a technical objection we will make when that evidence is offered. Is this unrefined naphtha or not? If the proof is confined to that order there will be no controversy about the transportation.

By the Court: Of course, they have to go on their theory. Do you admit these shipments were made as alleged?

By Mr. Swacker: Yes, sir.

By Mr. Diggs: No, sir, not as alleged, but we will admit the cars mentioned in the indictment were shipped by the Gypsy Oil Company to the Gulf Refining Company at the time and places mentioned.

By the Court: Is that satisfactory?

By Mr. Diggs: They allege that we did it fraudulently.

By the Court: I am talking about the physical facts.

By Mr. Diggs: Yes, the physical fact of shipment.

By Mr. Payne: That is satisfactory.

By the Court: Very well.

By Mr. Payne: May I make this suggestion that the

defendants know as well as the Government does the facts necessary to prove, that is every fact in the indictment. Now it would conserve the time of the court if they would now state everything that they are going to admit.

By the Court: You state what you want them to admit and I will see if they will admit it or not.

By Mr. Diggs: We object to this in the presence of the jury.

By the Court: I will instruct the jury. This is merely for the purpose of conserving the time of the court. If the defendant wouldn't admit that that would be no evidence against them at all.

By Mr. Diggs: That is alright.

By Mr. Payne: Except it would conserve the time of the court at the expense of the Government.

By the Court: Now what facts do you say could be shortened?

By Mr. Payne: The facts set out in paragraph 3.

By the Court: What is that?

By Mr. Payne: Of the indictment with reference to the rates. The rates were on file with the interstate commerce commission as alleged in the indictment and that the minimum weight—

By the Court: That—can that be agreed to.

By Mr. Diggs: No, sir, if the court please.

By the Court: What is the point on that so they can direct their proof to that.

By Mr. Diggs: We contend that during this period of time that this rate was not in force at all that this rate did not govern.

By the Court: Of course you will have to prove that, that is the issue. What else do you want?

By Mr. Payne:

Q. Mr. Riedeman, was the practice of the Gypsy Oil Company Gasoline Department, while you were there and employed, to blend the casinghead gasoline with naphtha?

A. It was.

Q. What was the color and gravity of the naphtha with which the casinghead gasoline was blended? A. Why—

By Mr. Diggs: I object, incompetent, irrelevant and immaterial and for the further reason it is not shown the witness knows.

By the Court: You just assume he was qualified: you will have to qualify the witness.

By Mr. Payne: If he has not seen any, he cannot testify as to what the color is. I will arrange that——

By Mr. Payne:

Q. Upon an arrival of a shipment of naphtha——

By the Court: What experience have you had in observing naphtha when dealing with it, what is your experience? The objection is that no foundation is laid for this witness to testify.

Q. What was your position, Mr. Riedeman, when you were employed by the Gypsy Company at Kiefer?

A. At the time I had charge of the naphtha and of gasoline shipments.

Q. Did you see the naphtha as you unloaded it?

A. Yes, sir.

Q. What was the color of all that you ever saw?

A. It was a clear color.

Q. Did you make tests as to the color and gravity?

A. Made gravity and color tests.

Q. Of all that naphtha that you ever tested as to its gravity what was about the gravity of the naphtha?

A. Around 54 gravity.

By the Court: What is the point as to the test as to specific gravity, what is the reason for that question I would like to keep up with this myself.

By Mr. Payne: We will show the naphtha with which the casinghead gasoline was blended was a refined naphtha or clear water color.

By the Court: Gravity, what does that have to do with it?

By Mr. Payne: The gravity indicates as to its weight whether it is heavy or light. It has something to do with the question of whether or not it is refined.

By the Court: Where did they bring this casinghead gas from?

A. Casinghead?

By the Court: Yes, sir, gasoline.

A. It was made at the gasoline plant where I worked.

By the Court: How did they make it?

A. By compression. Compression process.

By the Court: You say compression. The jury don't

know what compression process is, you will have to explain that. Explain to the jury what you mean.

A. The gases are pumped in from the field, causing head gases from the well are pumped into the plant from the field.

By the Court: Where do they get the casinghead gas from?

A. Out of the oil wells. The gases from the oil wells.

By the Court: Comes out separately or with the oil?

A. Separately.

By the Court: Separately from the well?

A. Separated from the oil.

By the Court: How do they manage to bring it up separately?

A. Put tubing in the well.

The Court: They [illegible] separate it?

A. It could be drawn off separate through a casing, yes, sir.

The Court: Now they pump that into the plant?

A. Yes, sir.

The Court: Pump in the casinghead gas?

A. Yes, sir.

The Court: Now suppose they didn't have the casing separate, would it all come up together?

A. It would come up with the oil then.

The Court: So the casing is fixed so that they cut that off, the gas from the oil?

A. Well, yes; it is not mixed with the oil at all when it comes out of the well.

The Court: Go ahead.

Q. Mr. Riedeman, were the cars in which the naphtha was brought to Kiefer clean cars or dirty cars?

A. They were clean cars.

Q. What kind of cars as to clean or dirty cars did you ship out the blend in?

A. As a rule shipped the same cars back that we received the naphtha in.

Q. Suppose a dirty car came in?

A. We would have it cleaned.

Q. Had it cleaned before you shipped out a blend in it?

A. Yes, sir.

The Court: Now let me see; now you got this casinghead gas piped in from the field, and then by com-

pression out of the gas you get the casinghead gasoline. Now you say you blended that with naphtha. What do you mean by naphtha?

A. That was the product we received from Port Arthur; it is a heavier product than the gasoline, about 54 gravity, and we blend this high grade liquid casinghead gasoline with this to lower the gravity of the casinghead gasoline.

The Court: Now you talk about these cars were cleaned, you mean the cars that brought the naphtha in from Port Arthur here?

A. Yes, sir.

The Court: Now you mean after you blended it you shipped it back to Port Arthur?

A. Yes, sir.

The Court: Now where did they get that stuff they call naphtha, where did that come from?

A. From the refinery at Port Arthur.

The Court: How did they make that?

A. That is made from crude oil. By refining crude oil. That is one of the parts that come off.

The Court: Go ahead.

Q. Mr. Riedeman, I show you a number of shipping orders covering shipments billed as gasoline from Kiefer, Oklahoma, shipped by the Gypsy Oil Company, Gasoline Department, during the month of November, 1916, consigned to the Gulf Refining Company, Port Arthur, Texas, and I will ask you to examine these shipping orders and say whether they were signed by you?

Mr. Diggs: We object as incompetent, irrelevant and immaterial, because they are shipments covering dates before which the unrefined naphtha rate went into force and effect, and before the date of any shipment mentioned in the indictment. And we further object, if the court please, to the attorney for the United States stating what the papers are before he gives them to his witness. The proper practice, as we understand it, is for the paper to be handed to the witness and if he is allowed to talk, for him to state what it is.

The Court: Now there is one way I think that would be competent. Now let me see those orders. (Mr. Payne handed papers to the court.) I will let you ask him, I will permit you to ask him how he billed these cars out at the time alleged there, then if he tells you how he billed them out, unrefined naphtha, I will permit you to ask him why



he did that; then it may be competent to ask him if just immediately prior to this he billed it out as gasoline and get his explanation for that. I *want* permit this at this time.

Mr. Payne: All right.

Q. Mr. Reideman, I show you a batch of shipping orders covering shipments of unrefined naphtha from Kiefer, Oklahoma, shipped by the Gypsy Oil Company, Gasoline Department?

Mr. Diggs: If the court please, we insist that he show them to the witness and ask them what they are.

Mr. Payne: In that event the record won't show what they are.

The Court: We will get the record by asking him what they are. Say, I show you certain orders, what are they?

Q. Tell the court and jury—

The Court: No, just give me that now. (Mr. Payne hands papers to the court.) I show you certain orders here, dated, the first one dated Kiefer, Oklahoma, December 17, 1916, the last one Jenks, Oklahoma, January 1, 1918, and ask that they be identified by the stenographer as proper exhibits, and then they will be identified, and then you may ask him what they are.

By the Court: You want to put those orders in the record.

By Mr. Payne: I want to show—

By the Court: You want to put them in the record?

By Mr. Payne: Yes, sir.

By the Court: Let them be identified as Government's Exhibits 2, 3, and 4, etc., and refer to them as Government's Exhibits 2, 3 and 4 and so on.

By Mr. Payne: I offer this as Government's Exhibit 2 for identification.

Q. Referring to Government's Exhibit 2 I will ask you to state what those orders are?

By the Court: Now what does the exhibit contain. What does the exhibit contain?

A. Contains the shipping orders of shipments of unrefined naphtha from Kiefer, Oklahoma, to Port Arthur, Texas, from the Gypsy Oil Company, gasoline department, of Kiefer to the Gulf Refining Company of Port Arthur.

By Mr. Diggs: I object, incompetent, irrelevant and

immaterial and not shown to have been made by the authority of the Gulf Refining Company or the Gypsy Oil Company or any of its officers. I am making this objection because the gentleman does not do us the courtesy of showing us what he is offering so we may know what it is.

By Mr. Payne: Mr. Diggs, you can see anything we have. You have seen it and you know what they are.

By the Court: Now just a minute, gentlemen, who made those orders?

A. I did.

By the Court: Who wrote the orders, you wrote the orders?

A. Yes, sir.

By the Court: In what position were you acting then for the Gypsy Oil Company if you were acting in any?

A. Shipping clerk I guess you would call that.

By the Court: When you made your orders were you acting under anybody's direction?

A. Mr. Millard, the superintendent.

By the Court: Now then you can show them to counsel and give them an opportunity to object. You are ready to introduce them now if you want to introduce them.

By Mr. Payne: I have not offered them yet.

The Court: Now I would suggest when you have these exhibits show them to counsel by the other side and they can be examining them.

Mr. Diggs: No objection.

The Court: Proceed.

Mr. Payne: I offer Exhibit No. 2 in evidence.

The Court: Very well, it is admitted, no objection.

Q. Now you say you wrote on there "Unrefined Naphtha." How come you to write unrefined naphtha?

A. I was instructed by the plant superintendent Mr. Millard.

Q. Mr. Readerman, how were the bills just prior to the time that the change was made—

The Court: When is the first one there?

Mr. Payne: December 17, 1916.

The Court: Where is that that you offered? Let me see that. Now I will permit you to ask him this ques-

tion—if he ever consigned any of that identical commodity under any other name and if so, when and where; let you show him that to refresh his memory, then let him give his reasons if any.

Mr. Swacker: Is that limited to Port Arthur?

The Court: Yes, on this question that is limited to Port Arthur.

Mr. Payne: The gentlemen needn't anticipate anything.

Q. Referring to Government Exhibit No. 2, Mr. Reade-man, I will ask you if the same commodity as was shipped in the cars mentioned in those orders was ever previously shipped under any other description.

Mr. Diggs: If the court please, we admit we shipped it at the unrefined naphtha rate.

The Court: I will let him ask it. You answer that question.

A. As far as I know it was the same product.

*By the Court.*

Q. You know whether it was? A. Yes, sir.

Q. The same product?

A. Yes, sir. There was no difference in the gravities that I remember of.

Q. It is your best recollection it was the same?

A. *Ar und*

Q. What is your best recollection as to it being the same?

A. It was the same.

Q. The same? A. The same.

Q. Well, now do you know of any reason why just prior to that time you shipped it as gasoline?

A. I had instructions to bill it as gasoline when I went to work for these people.

Q. But then beginning there with those orders (Exhibit 2), instructions, you were to bill it as——

A. Unrefined napatha.

Q. But prior to that time your instructions were to bill it as gasoline? A. Yes, sir.

Q. And you don't know why the change was made?

A. No, sir.

Q. Very well that is as far as you can go.

By Mr. Payne: I offer ten papers and ask they be marked Government's Exhibit 3 for identification.

By the Court: Identified as an entire Exhibit Govt. No. 3.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, the shipments having been made before the *tarrif* rate—

By the Court: I will not permit you to go into that this witness testified the shipment and all shipments made prior to those—

By Mr. Swacker: December 2nd.

By the Court: As shown in Exhibit 2 shipments of this identical commodity according to his best recollection were made, were billed out as gasoline. You have got that in so I will not permit you to put these in the record, I will not permit them to be introduced, in the record, he has already testified.

By Mr. Swacker: We interpose an objection to the testimony on the ground of irrelevancy.

By the Court: Very well I will permit that, these prior shipments made under the direction of the same superintendent, Mr. Mallard?

A. Yes, sir.

By the Court: I will permit that to show the conduct of their business.

By Mr. Swacker: If your honor understands the basis of our objection we don't deny—

By the Court: That comes afterwards as a matter of explanation.

By Mr. Swacker: But we deny the revelancy. This is attempting to show a rule or course of conduct in respect to other things than those alleged in the indictment and we say any explanation of such course of conduct must be negatived at this time and for that reason it is incompetent, irrelevant and immaterial.

By the Court: I will permit it for this reason, the Government says this was gasoline and not unrefined naphtha. That is their contention now the shipments from the same points by the same concern that conducted the business, that is the circumstance for the jury to consider in weighing the evidence. This was prior to a certain date that they shipped it as gasoline. Now they may of course, I am assuming the explanation that will be admitted on the part of the name used by the defense they could have called it either name and for certain reason and for their convenience they used either name. I will instruct the jury not to make up your minds on any part of the evidence; that when you hear the evidence in this case you always keep your minds open remember—

ing all of the evidence as near as you can and keep your minds open and hear the last part of the evidence and then keep your mind open and not make up your mind until you have heard the argument and the instructions of the court.

By Mr. Diggs: We want to get in an exception. We object to the introduction of the evidence as incompetent, irrelevant and immaterial.

By Mr. Payne: What evidence.

By Mr. Diggs: The answer of the witness the court permitted him to answer. And for the further reason the Government states that it is for the purpose of proving a course of conduct and the fact surrounding the different shipments not being shown to be identified and similar in the material respects of the rate and for the further reason that at the time the ten papers in Exhibit 2 mentioned the only rate in existence by which it could be shipped was the classification of gasoline as shown by the tariff.

By the Court: Now on these shipments that are referred to originated at the same point Kiefer and brought the same rate to Port Arthur.

A. Yes, sir.

By the Court: And was the same material—same commodity according to your best recollection?

A. Yes, sir.

By the Court: And shipped for the same purpose.

A. Yes, sir.

By the Court: Very well you may have your exception.

By Mr. Payne: May it please the court, written evidence of this sort is so much more satisfactory that verbal evidence won't you let me put this one in.

By the Court: No, I have ruled on that.

By Mr. Payne: May we bring it up later.

By the Court: Well, if you have any authorities on it. It is not based on these shipments. This other is collateral; this other evidence is collateral evidence.

By Mr. Payne: Here is the point, Judge, that we have already brought in evidence which shows that they have been shipping the same thing all the time. Now our indictment begins on December 2nd. Now we, it seems to me, should be allowed to show what happened just prior to that in order to show the nature of the commodity.

By the Court: The evidence is that it is the same commodity and that prior to that time they billed it out under different names and what else do you want except to incumber the record and I have excluded it on that ground.

By Mr. Payne: Alright. That is all for this witness.

By the Court: Now you don't object to it on the ground that he cannot testify as to the course—he cannot testify as to the cars because it is shown in writing.

By Mr. Diggs: No.

By Mr. Swacker: Circumstances are not shown to be identical.

By Mr. Diggs: Our objection goes——

By the Court: It is not competent for any purpose whether proved by parole or in writing.

By Mr. Diggs: Yes, sir.

By Mr. Payne: May I state that the tariff don't change the nature of the commodity.

By the Court: That is a matter that might come up later. Proceed.

*Cross Examination of Mr. Riedeman by Mr. Diggs.*

Q. What did you say your name was? A. Riedeman.

Q. I believe I understood you to say you did not know why this commodity was shipped at one time as unrefined napatha and other times gasoline? A. I didn't.

Q. It is a fact, however, Mr. Riederman, that the product that was shipped as gasoline was so shipped prior to the time that the part named unrefined gasoline was shipped?

A. Yes, sir, that is to Port Arthur.

Q. And after you were directed to ship it as unrefined napatha no other shipments to the same destination, to Port Arthur were shipped as gasoline?

A. No, sir, not to my recollection, no, sir.

Q. Now, you say, Mr. Riederman, as I understand you that this was the stuff that came up that you knew about it; do you know what the stuff was other than taking the gravity—what you call napatha that came up from Port Arthur, do you yourself know anything of the nature of that article?

A. I can't state that I do except it is heavier.

Q. You know it is heavier because you took the gravity test? A. Yes, sir.

Q. In this article called casinghead gasoline do you know what the gravity of that is before it is mixed with what you call the napatha from Port Arthur?



A. The gasoline at Kiefer was around 85 gravity as well as I remember.

Q. Do you know anything about the difference in the nature of the article before it was blended with the naphtha from Fort Worth than it was after the blending?

By the Court: You mean Port Arthur.

By Mr. Diggs: Port Arthur I should say.

A. Before it was blended?

Q. Yes, what difference did it make in the casinghead gasoline? A. Lowered the gravity.

Q. Do you know what, if any, what effect that would have of it as to making it a finished or unfinished product?

A. Well, I can't say that I do.

Q. Do you know why, for what purpose the shipments were made to Port Arthur what the purpose of shipping it was?

By the Court: That is if he knows of his own knowledge.

A. Of my own knowledge, no, I couldn't say.

Q. You don't know?

By Mr. Swacker: He said that they were shipped for the same purpose before and after.

By the Court: You mean you don't know what they did with it after they got down there?

A. No, sir.

By the Court: But do you know for what purpose it was shipped down there, do you know what they shipped it down there to do with it? Do you know in the administration, the conduct of the business do you know what it was shipped down there for?

A. Only what I was told by the superintendent that it was shipped there to be reblended.

Q. You spoke about the color; is it a fact that you could tell with the eye the difference in the color between the naphtha that was brought up from Port Arthur and the casinghead gasoline. Is that a fact that you can distinguish by looking at it, or does it have to be tested by a certain apparatus?

A. We made an effort to have all our shipments as near water-white as possible and if the naphtha was badly off color it would cause the blended product to be off color.

Q. Can you tell the color of the naphtha as it comes out by the eye, whether it was on or off color, or did you have to use apparatus in order to determine color.

A. We used cut bottom bottles for that.

Q. You used a cut bottom bottle you say?

A. Yes, sir.

Q. Now, it is a fact in order to determine the color of either the naphtha, or casinghead gasoline you would have to use an especially constructed apparatus for that, isn't it?

A. To be very accurate in the color, yes, sir, it would.

Q. Did you have such an apparatus out there and did you take the color test of this material?

A. Only so far as using a cut bottom bottle, that is all we used.

Q. Then in your judgment what color was it, on or off color, water-white, or what, or under?

A. It was very close to water-white.

Q. And you think you can depend on your eye by looking through bottom bottle?

A. Well, yes, sir, you can determine whether it is a clear white or not.

Q. Was it part of your business to make the test?

A. We would examine it.

Q. Who is we, did you examine it?

A. I examined a lot of it myself and had assistants to examine it.

Q. Was it part of your duty to make the color test?

A. Yes, sir.

Q. You don't know the naphtha that came which you blended with that was not gasoline?

By the Court: That commodity—that came from Port Arthur?

A. I never remember it being billed in as gasoline.

Q. You know whether it was gasoline or naphtha?

A. I could not say it come under the name of heavy naphtha—we called it heavy naphtha.

Q. How was it billed? A. Heavy naphtha.

By Mr. Diggs: That's all.

*Redirect Examination of the Witness by Mr. Payne.*

Q. Were there any cars of off color naphtha that came in to Kiefer from Port Arthur?

A. There was very few cars that you term badly off color, might have been off color what we had to test was to find out whether it was badly off color enough to make a blended color. Might have been slightly off color as it came in but there was very slight amount to my recollection.

Q. But what is your recollection, what was the number of off color cars that would come in on an average per month? What part, what percentage?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial.

By the Court: You went into it and asked about it.

By Mr. Diggs: We object—we went into it because he testified about the color, I asked him to show he did not possess knowledge to know what the color was.

By the Court: Why do you want to show that.

By Mr. Payne: To show most of the cars were water white. That is all.

(Witness dismissed.)

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By the Court: The court will take a recess until nine o'clock. I am going to hold—we will meet at nine o'clock each day until we get through with this case.

By Mr. Diggs: If the court please, I think we can save time by meeting at ten or nine-thirty.

By the Court: You will have to get up earlier.

By Mr. Diggs: I am willing to come at nine but I think we can save more time—

By the Court: Gentlemen of the jury, you are cautioned not to read the newspapers, they are liable to publish articles about this case, so you don't want to do anything that will disqualify you from being a fair juror. You cannot tell what the newspaper will write so in order that there will be no danger about that just lay off reading the newspapers, don't read them at all. Now don't let anybody talk about this case in your presence and if anybody comes along and make or mentions this case, move on and leave him. Don't even discuss it among yourselves, don't talk about it and don't let anybody else talk about it in your presence. You may go and separate under the admonition of the court and meet here tomorrow morning at nine o'clock. The audience will keep their seats and let the jury pass out.

Court: Court will now take a recess until tomorrow morning at nine o'clock.

(Whereupon court took a recess until Tuesday morning at nine o'clock, April thirteenth, nineteen hundred twenty.)

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MORNING SESSION, APRIL 13, 1920.

(Whereupon, court met pursuant to adjournment and Honorable R. L. WILLIAMS, Judge, present and presiding, and the jury in this cause having been called and all found to be

present and counsel for plaintiff and counsel for the defendant, announced that they were ready to proceed, with the trial of this cause the following proceedings were had, to-wit:)

By Mr. Chambers: If the court please, the prosecution in this case has caused subpoenæs to be issued for certain witnesses to produce certain papers and books and records. Of course the prosecution would like to have an opportunity before they introduce those records in evidence to inspect them for the purpose of determining whether or not they are material and competent, that is from our records as we have them we expect those records—the record to show they have subpoenæs to show certain things.

By the Court: Here is what the practice is—what is it, Mr. Diggs?

By Mr. Diggs: I was just getting up for the purpose of hearing:

By the Court: With reference to the record called for the subpoena duces tecum——

By Mr. Chambers: I spoke to Mr. Diggs and he refused to give us the records.

By the Court: The way you would have to do that is to put a witness on the stand and ask them to produce the papers, put a witness on the stand and then they are in the custody of the court. I will then permit you to examine them. That is the only legal way.

By Mr. Diggs: If the court please before we are directed by the court to turn the papers over to the Government——

By the Court: They will be turned over to the court.

By Mr. Diggs: We say the law is when we are summoned by subpoena duces tecum, the practice is we produce the witness the paper is submitted to the witness to examine by the Government to find whether he has certain papers in his possession showing certain facts——

By the Court: Relative to certain matters.

By Mr. Diggs: Yes, sir, if he has them he has to produce the papers and what he says is to be read in the record, these are our papers and no law requires them to be delivered to anyone for inspection.

By the Court: I will permit them when they are produced in court and then they can determine whether or not they want to produce them. I will permit them to do that. They are not in the possession of the Government but are in possession of the court.

By Mr. Diggs: Yes, sir, but that practice is not to be permitted to require us to bring a vast amount of papers in and let them go through to see what is in them.

By the Court: I will take care of that— Now on this record, page 3, the clerk's record, is the record, this don't show the jury was re-sworn. The record should show and by agreement it was accepted by both sides and by agreement on each side the jury was re-sworn. It is not necessary to be put in this record but if they attempt to keep it correct I want to keep it correct.

The Court: Now I notice this record made here yesterday on page 3 of the record—of course the clerk's record is the one that should show it and does show it, but as they are trying to keep a stenographic report, it don't show the jury re-sworn. The record should show that when the juror was accepted by both sides by agreement of counsel that the jury was resworn to try this case. Now I will not attempt to watch the correctness of the evidence except where there are exceptions, so the attorneys on each side ought to watch this record. There are several mistakes but they are so patent on their face they can be easily corrected.

Mr. Diggs: They can be corrected as a matter of fact as typographical errors.

The Court: I will mark them and the stenographer can show them to counsel on each side.

Mr. Chambers: If the court please, there is one matter I want to call to the attention of the court with reference to your procedure. Is it necessary in making the statement to the jury to state that the defendant was arraigned and plead not guilty to the indictment? Is that necessary in the statement?

The Court: I think not, the record shows it. Everything that is in the record in the case—the jury has got nothing to do whether it is properly arraigned.

Mr. Chambers: Mr. Diggs, we subpoenaed Mr. John W. Tryon and we excused him as I understand the agreement on your part you would substitute some other witness who would testify to the same matter with reference to certain records that we subpoenaed him to bring here. We would like to have that witness, we would like to produce him first, just for the purpose of getting these records.

Mr. Diggs: Well, we have Mr. Slater or Mr. Pritchard.

Mr. Chambers: They both have charge of these records?

Mr. Diggs: The records are here, they know as much about them as the man you subpoenaed.

The Court: Well, are they legal custodians of them?

Mr. Diggs: Well, neither one of the gentlemen subpoenaed were legal custodians. We are not raising that question. We have the books here and there are no questions as to the identity. There may be some question as to their admission but not as to their identity.

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Thereupon, WILLIAM A. SLATER, produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

*Direct Examination of Mr. Slater by Mr. Chambers.*

Q. Will you state your name to the court and jury?

A. William A. Slater.

Q. And where do you live, Mr. Slater?

A. Port Arthur, Texas.

Q. Port Arthur, Texas. The jury can probably hear you. I am hard of hearing myself. I have got to hear you. What is your business?

A. Assistant superintendent of the Gulf Refining Company.

Q. At Port Arthur, Texas? A. Yes, sir.

Q. Have you charge—that is I might make a statement—We issued a statement to Mr. Tryon—

By the Court: Ask him if he has certain records.

By Mr. Chambers: I didn't suppose he did. I can ask him the direct questions.

*By Mr. Chambers.*

Q. Have you here at this time under your control—

By Mr. Diggs: I was going to suggest to save time that if Mr. Chambers will tell us what records he wants we have them here.

By the Court: What do you want?

By Mr. Chambers: I want the original paid freight bills covering the cars which are listed here and consigned to the Gulf Refining Company at Port Arthur, Texas.

By the Court: Call the number of the cars so as to put it in the record.

By Mr. Chambers: From Kiefer, St. Louis and San



Francisco, car C. R. C. X. No. 1030, dated 1-1-17; freight bill 1788. Now there is a whole list of these, if the court please.

Mr. Chambers: From Kiefer, the St. Louis-San Francisco, Car Initial and number G. R. C. X. first one, 1030, that is the initial and number of the car. We have got the date when it was unloaded, 1-1-17, freight bill Number 1788. Now then we want that. There is a whole list of these, if the court please——

Mr. Diggs: Are you now after the ones in the indictments?

Mr. Chambers: G. R. C. X.—I don't know.

Mr. Payne: Yes, sir, they are all in the indictment.

Q. Have you got G. R. C. X. 1030? A. Yes, sir.

Q. Will you please lay that aside, G. R. C. X. 1001, kindly lay that aside. G. R. C. X. I don't read any better than I hear.

Mr. Diggs: Let me suggest I show this to the witness and he can take it and see if those are in there.

Mr. Chambers: Very satisfactory, he can check it over and if it suits the convenience of the Court and the attorneys for the defendant, he can take the list and go outside and do that and we can be examining another witness.

The Court: Very well.

Mr. Chambers: If that would suit them better, and then we can check it up.

A. You want this list checked with these numbers?

Mr. Chambers: Yes, sir, and the cars and the freight bills. I believe Mr. Sweet is our next witness, I gave the names to the bailiff.

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Whereupon, Mr. C. E. SWEET, a witness on behalf of the government, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. C. E. Sweet by Mr. Chambers.*

Q. You may state your name to the Court and jury.

A. C. E. Sweet.

Q. Where do you live, Mr. Sweet? A. Kiefer, Oklahoma.

Q. What is your business?

A. In charge of the gasoline plant there.

Q. I did not hear you.

A. In charge of the gasoline plant.

Q. You are in charge of what gasoline plant?

A. The one gasoline plant, the one at Kiefer.

Q. And what is—what is the name of the Company that owns and runs this? A. Gypsy Oil Company.

Q. Gypsy Oil Company? A. Yes, sir.

Q. There was a subpoena served upon you Mr. Sweet to be in attendance upon this Court and to produce certain papers? A. Yes, sir.

Q. You received that subpoena? A. I did.

Q. Now after those papers—now have you those papers with you, did you bring them?

A. I have what papers were in my possession, yes, sir.

Q. That is all that I can ask for, have you got them here?

A. Yes, sir.

Q. Will you produce them? A. Yes, sir.

(Witness produces papers and hands them to Mr. Chambers.)

By Mr. Chambers: Now if the Court please while we are examining this witness I would like to have one of those papers examined by one of my co-counsel.

By the Court: Open them in the presence of the court and identify them.

By Mr. Chambers: Does the court mean to identify them by the stenographer, identify them as exhibits?

By the Court: Yes.

(Papers identified as Government's Exhibit No. 4.)

By Mr. Diggs: If the court please we desire to make an objection and take an exception to the ruling of court, that we produce any papers for the inspection of the Government's attorneys. We insist that if they are produced and in Court they then become a part of the record. That there is no law by which the Gypsy Oil Company is compelled to deliver its private papers to the inspection of any person except in so far as such papers contain relative matters to the investigation.

By the Court: Now this witness was asked the question if he had the papers in his possession, that he was required under the subpoena duces tecum to bring here. He said he had and he produced them. They are identified. Now I permit counsel to inspect them to determine whether or not they shall be offered in evidence. You may have an exception to that.

Mr. Diggs: To which ruling of the Court the defendants except on the ground it constitutes an unlawful seizure and inspection of papers prohibited by the constitution.

The Court: Very well.

Q. How long, Mr. Sweet, have you been in the employ of the Gypsy Oil Company? A. May 1, 1916.

Q. May 1, 1916. Have you been continuously in their employ since that time. A. I have.

Q. What has been the character—what is the name of the positions that you have held since that time, and you might state what is the extent and nature and character of your work under the various positions?

A. I was first employed as plant foreman.

Q. Where?

A. At Kiefer, prior to the time the Jenks plant was built, afterwards promoted to assistant superintendent and then I was placed in charge of both plants.

Q. Now then at Kiefer, that was where you had—

The Court: Now this man is an employee of the Gypsy Oil Company and not the Gulf Refining Company?

Mr. Chambers: I understand that.

The Court: I am asking him that. You are an employee of the Gypsy Oil Company and not the Gulf Refining Company? A. Yes, sir.

Q. And these papers you brought here are papers and records of the Gypsy Oil Company and not the Gulf Refining Company? A. Yes, sir.

The Court: Very well, go ahead.

Q. In Kiefer you had one of these gasoline plants, gas compression? Is that right? A. Yes, sir.

Q. That is, you produced casinghead gasoline from the gas by the method of compression?

A. That is what you would term it, most generally termed.

Q. That is what it is most generally termed?

A. Yes, sir.

Q. By people in that business? A. Yes, sir.

Q. And your system at Kiefer after you had produced the casinghead gasoline was to mix that or blend it with another commodity and then ship it south to Port Arthur, is that right? A. Yes, sir.

Q. During all these years from 1916 up until sometime in 1919? A. Yes, sir.

Q. That was the procedure of the product that you blended with the casinghead gasoline that came from the Gulf Refining Company at Port Arthur? A. Yes, sir.

Q. But was blended and mixed there at the Kiefer plant?

A. Yes, sir.

Q. Now you say that you also have had charge of the plant at Jenks? A. Yes, sir.

Q. And the same kind—it has been suggested and before I go any further go back to Kiefer in your mind. I don't mean actually. And what was the proportion, the average proportion, of each of the commodities that were mixed together. Do I make myself plain to you? A. Yes, sir.

Q. Alright. A. I think it averaged about thirty-three and a third per cent of crude naphtha with the product.

Q. Thirty-three and a third per cent of crude naphtha?

A. Yes, sir.

Q. When you say crude naphtha you mean the commodity that was shipped from Port Arthur to Kiefer for the purpose of putting in this blend? A. Yes, sir.

Q. About thirty-three and a third per cent of that product which you call crude naphtha. A. Yes, sir.

Q. You don't know how that naphtha was manufactured, that is you were not present and did not have anything to do with the process? A. No, sir.

Q. You call it crude naphtha because that was the manner in which it was billed to you from Port Arthur, don't you—

By Mr. Diggs: We object to counsel cross examining and leading his own witness.

By Mr. Chambers: I don't mean to lead the witness, just trying to get to the witness what I desire—

By the Court: I would permit you to do it under certain circumstances. He is a witness that is supposed to be affiliated with the defense, but I think it is a better practice to proceed on the theory of not leading him.

Mr. Chambers: I will try to do that as best I know how.

The Court: Now why do you call it crude naphtha?

Mr. Chambers: I would rather go after it in the other way.

The Court: I ask him; that don't call for a leading question.

Mr. Chambers: I had rather go after it in another way.

The Court: Now let's see your way.

Mr. Chambers: I was going to ask him if he knew anything about the manufacture and the production or process by which these particular commodities that came from Port Arthur to Kiefer was made.

The Court: I will ask him this question.

By the Court:

Q. Why do you call that crude naphtha?

A. That was the only term we had for it, it was billed to us as crude naphtha.

Q. The only reason you say it is crude naphtha is because the billing which comes to you from the railroad at Port Arthur says it is crude naphtha, isn't it?

A. Well, not necessarily, we always spoke of it as crude naphtha.

Q. You people at Kiefer spoke of it as crude naphtha?

A. Yes, sir.

Q. But you didn't know anything about what it was as it was manufactured at Port Arthur? A. No, sir.

Q. Now, as a matter of fact, prior to December 2, 1916, that same commodity was sent up here and billed as naphtha?

A. I don't know.

Q. You don't know? Weren't you there?

A. Sure, I was there, but I was not supposed to know everything. I was only there six months then.

Q. Well, you were foreman of the plant?

A. I was foreman but didn't understand about the billing.

Q. Well, you were foreman afterwards and you remember it was billed as naphtha? A. Yes, sir.

Q. Prior to December 2, 1916, it was billed to Kiefer as plain naphtha?

A. I was foreman and possibly didn't see the bills.

Q. Do you remember that prior to a certain time it was billed as naphtha from Port Arthur and that then another rate was put in and it was billed as crude unfinished naphtha?

A. It depends on what time you are speaking of.

Q. Let's put it December 2, 1916?

A. No, sir, I do not.

Q. You do not remember anything as to the billing prior to that time? A. I couldn't say I saw the bills.

Q. What were your duties prior to December 2, 1916?

A. I was in charge of the construction, yard work.

Q. You didn't have anything to do then with the receiving of the north bound shipments?

A. Possibly may have had something to do with the unloading of it.

Q. But not with examining the way bills? A. No, sir.

Q. Or anything of that kind? A. No, sir.

The Court: Who checked up the way bills, the freight receipts, whose duty was that?

Mr. Swacker: If the court please, I don't think this witness knows it but we don't dispute that fact; we dispute the relevancy.

The Court: I just wanted to see. Whose duty was that?

A. The superintendent and clerk in the office, I suppose.

Mr. Chambers: Do I understand they make an admission prior to December 2, 1916, this same commodity was billed from Port Arthur as naphtha?

Mr. Swacker: Yes, we do concede that, but we deny absolutely its materiality. The facts will develop that there was no other rate by which it could be shipped.

The Court: That is a matter which will come up later

Mr. Swacker: Yes, sir, that is the reason we say it is irrelevant. It is exactly the same proposition as to the question that arose yesterday.

The Court: Very well, I will let him go along.

Mr. Swacker: Note our exception.

The Court: When they offer the proof I will let you except.

Mr. Chambers: Well, if they make the admission doesn't that make it a part of the record to the jury without offering it?

The Court: Are you willing to get it in that way?

Mr. Chambers: They put it in.

The Court: I understand prior to December 2, 1916, that the government offers to prove——

Mr. Chambers: That the north bound shipments——

The Court: That this commodity which was shipped from Port Arthur to Kiefer for the purpose of being blended with the casinghead gas was billed as naphtha.

Mr. Swacker: Yes, sir.

The Court: And that after December 2nd it was billed as crude naphtha?

Mr. Swacker: Crude unfinished naphtha. We don't want the statement in the record that we put it in.

The Court: No, I said the government, and the defendants save an exception to its relevancy or materiality in order to shorten the record, admit the fact.

By Mr. Swacker: We want the basis of our objection——

By the Court: And the court admits this for the purpose for showing the conduct of the business and during that period and grant an exception to the defendant.



By Mr. Swacker: And we want to go further and state the basis of our objection. We assume this evidence to be offered as stated by the court indicating the course of conduct and we say it would be admissible only if it were shown that all the surrounding circumstances were identical, especially the material circumstances that under the evidence as stated there was a change in the rate which was the most material circumstance, and no offer has been made to prove that the circumstances were identical or such a basis as would admit this evidence and wherefore we say it is incompetent, irrelevant and immaterial.

By the Court: For the present it is admitted and your exceptions saved. Now the record shows on yesterday "no not as alleged but we will admit the cars mentioned in the indictment were shipped by the Gypsy Oil Company to the Gulf Refining Company at the time and place and on the times mentioned." They have not got the words over the line. Those words ought to be in there.

By Mr. Chambers: That is the admission.

By the Court: It was admitted yesterday but they have not got that in the admission.

By Mr. Diggs: I don't know that we admitted that but we will admit it.

By the Court: You admit it all except all over the line mentioned, that would be necessary or they would have to prove it.

By Mr. Diggs: In excuse of the stenographer, I don't remember stating those words but we have no objection to their going in.

By Mr. Chambers: Let the record show that is an admission as if on yesterday.

By the Court: The record will show that, he says he will admit that.

Q. Now then, you also performed certain duties at Jenks, didn't you? You stated awhile ago there was a casinghead gasoline plant in Jenks. A. Yes, sir.

Q. Is that of the same kind and character as the casinghead gasoline plant in Kiefer, compression?

A. Same kind only on a smaller scale.

Q. That is, it is a smaller plant. A. Yes, sir.

Q. That is, you bring the gas out of the oil well and transport it through pipes to your plant and there it goes through certain processes, the gas itself whereby this liquid which we are calling casinghead gasoline is produced? A. Yes, sir.

By the Court: You state that the Jenks plant is a compression plant too? A. Yes, sir.

By the Court: Now, that was all gone over yesterday and explained to the jury by one of these witnesses what a compression plant was.

By Mr. Chambers: I am sure I was trying to make it just as plain as I could. I am not trying to repeat anything.

Q. Now, do you ship this product that you manufacture at Jenks to Port Arthur? A. Yes, sir.

Q. And you ship it to the Gulf Refining Company?

A. Yes, sir.

Q. And you ship the product the liquid you take from that compression plant to Port Arthur without mixing it with anything whatever? A. Yes, sir.

Q. In other words—

By the Court: You mean you ship the casinghead gas without blending it?

A. Yes, sir.

By the Court: It isn't mixed with the product it is mixed with at Kiefer? And is not mixed with any product whatever but it is a commodity that comes out of your compression plant?

A. Yes, sir.

By the Court: That is put in these tank cars and is a liquid, the same thing that you produce at Kiefer?

A. It is casinghead gasoline as we call it.

A. It is the same thing only we do not blend it as we do at Kiefer.

By the Court: You mean now you shipped the identical commodities, to-wit, casinghead gas from Kiefer to Port Arthur with which you blend at Kiefer with the product that is received from Port Arthur?

A. Yes, sir.

By the Court: Go ahead.

By Mr. Gann: May I suggest the record your honor shows a shipment of casinghead gas. Our position is that is a liquid and is therefore casinghead gasoline.

By the Court: You say you called it casinghead gas or gasoline?

A. Call it unrefined naphtha.

By the Court: You mean this stuff you shipped from Jenks you called that unrefined naphtha?

A. Yes, sir.

Q. And the blended stuff you shipped from Kiefer you also called that unrefined naphtha?

A. Yes, sir.

Q. You never called the blended stuff you shipped from Kiefer, unrefined naphtha until after the 2nd of December, 1916, did you?

A. No, sir.

By Mr. Swacker: We object to that on the same ground as the previous objection.

By the Court: Very well.

By Mr. Swacker: Give us an exception.

By the Court: What did you call it in the shipment of it prior to December 2, 1916?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and not within the issues in the case and not shown that the witness knows.

By the Court: You may have your exceptions.

A. I was not in a position to know. I was not in charge of the shipments at that time.

By the Court: Were you working there?

A. I was working there.

By Mr. Diggs: We will concede——

By Mr. Chambers. We asked them to concede these facts. Now when we come to prove them they concede them.

By Mr. Diggs: We object to that statement, it is not within the issues in this case.

By the Court: Now both of you stop. Now do you know how it was shipped prior to December 2, 1916?

A. I know how it was loaded in the cars.

By the Court: Do you know how it was shipped and billed?

A. No, I do not.

By the Court: Do you know how it was billed after December 2, 1916?

A. I do.

By the Court: Why do you know how it was billed since when you do not know how it was billed before.

A. I was in charge of the shipments after October, 1918.

By the Court: Go ahead.

Q. You never heard the product that is produced from the compression plant called unrefined naphtha until after the 2nd of December, 1916, and you know that prior to that time it was always called casinghead gasoline and is yet?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and the witness not being shown to have a knowledge, assumed to him that it was called this prior to December 2, 1916.

By the Court: Objection overruled. You may have an exception.

Mr. Diggs: To the last part of the question we object as calling, or assuming that the witness knows a state of facts that is not shown in evidence that he does know. The first part we have no objection.

The Court: I will let him answer.

Mr. Green: We object to the method. It is not shown that the witness is entirely unwilling to answer.

The Court: I will permit it.

Mr. Green: And I think it is argumentative——

The Court: Answer the question.

A. After that date it was known as unrefined naphtha and prior to that date, commonly known as gasoline.

Q. And there are numerous other casinghead compression plants at Jenks and at Kiefer, are there not?

A. Yes, sir.

Q. And prior to December 2, 1916, they called their product casinghead gasoline?

Mr. Diggs: We object, incompetent, irrelevant and immaterial.

The Court: Yes, I will exclude that. The way the question is propounded I exclude it. I sustain the objection.

Mr. Chambers: I am sorry I put it that way.

The Court: Now, I want to ask him a question. How long have you been in that kind of business; you stated you were foreman of this casinghead compression gasoline plant. How much experience have you had in that kind of business?

A. Since May 1, 1916. I was foreman of the construction the first year.

The Court: Well, now, what kind of experience did you have prior to May 1, 1916?

A. I was in the coal business.

The Court: Very well.

Q. Now, you state that there are other casinghead gaso-  
line plants at Jenks and Kiefer? A. Yes, sir.

Q. Will you tell me the names of the other casinghead  
plants at Jenks?

The Court: Read that question to which they ob-  
jected.

(Record read by the Reporter.)

Mr. Chambers: I don't believe that is hearsay.

The Court: I will sustain the objection to that ques-  
tion.

Mr. Swacker: We ask that the jury be instructed  
with relation to it, because that has gone over the dam.

The Court: Very well, that is withdrawn from the  
consideration of the jury.

Mr. Chambers: He didn't answer the question.

The Court: Yes, he did.

Mr. Chambers: I beg your pardon, I didn't get that.

The Court: That is too general a question. I will let  
you show the conduct of that business and those that were  
engaged in it, but I don't believe I will let you do that  
yet. What is that admission about the officers of the Gulf  
Refining Company?

Mr. Chambers: That the Gulf Oil Company is a  
corporation and that the Gypsy and the Gulf Refining  
Company are subsidiary companies and that the Gulf Oil  
Company owns all the stock in the Gypsy and Gulf Re-  
fining Companies, except what stock was necessary to be  
issued to the directors for the purpose of qualifying them.

Mr. Diggs: I want to correct that admission. We  
admit all Mr. Chambers has said except the word 'neces-  
sary.' The Gulf owns all the stock of the Gypsy and Gulf  
except the qualifying shares held by the directors in each  
company.

The Court: Now is there any admission in there  
about the officers, their identity; is there any identity  
between the managing officers of the Gypsy and Gulf?

Mr. Diggs: There is no admission, as I recall the  
stipulation, as to the identity of the officers.

Mr. Chambers: Of course that is a matter that will  
be established as we go along in the trial of this case.

The Court: I know, but the court has got to rule on  
what is before it.

Mr. Chambers: Well, I think the evidence, if the

court please, sufficiently establishes that these parties were acting together in that the shipments were made from Port Arthur up here; in that the blend as made up here; in that the Gypsy sells the commodity to the Gulf Refining Company; and in that they are associated together as set forth in the stipulation. It seems to me that there you can see the common purpose.

By the Court: One corporation might own stock in another corporation and if the law permitted that, that don't show any criminal intent.

By Mr. Chambers: We haven't shown the criminal intent but will do it later on, but this is a question, I did not know this was a question of criminal intent but was a question of whether or not—

By the Court: Will that show any agency the fact one corporation owns stock in another, that show any agency itself.

By Mr. Chambers: In so far as these transactions have gone so far as it has gone, showing these two companies were associated together in producing this commodity that was shipped south.

By the Court: You are asking questions, the way these questions are propounded is hearsay unless there is enough privity shown between them to show—I don't think there is here. Now there is a certain way in the conduct of business by which, I think as far as I will let you go under the status of this case is to show what they did as a physical fact. What did you do in handling this business, how did you ship it, but as to what somebody said at the plant, I will not let you prove that.

Q. What other gasoline—casinghead gasoline plant are there at Jenks? A. The Oil States and the Tribes—

By the Court: If you will show how it was regarded up to that time and ask him how it was regarded in the scientific world in the approved science—

By Mr. Chambers: He is not a scientific man.

By the Court: If he knows.

By Mr. Chambers: How would he know if he is not a scientific man. I also asked him what it was called in the business world and the commercial world.

By the Court: You have not asked him that.

By Mr. Chambers: I have not yet, I have not considered him a competent witness on that proposition.

By the Court: I sustained the objection, go ahead.



By Mr. Chambers: That was——

By the Court: Go ahead. You didn't finish the answer.

A. Tribes——

Q. The Tribes Gasoline Company? A. Yes, sir.

Q. That is at Jenks? A. Yes, sir.

Q. What else? A. Small plant there known as the——

Q. The Ajax Plant?

A. It is a couple of miles from Jenks.

Q. They ship from Jenks?

A. I don't know where they ship from.

Q. The Aiken Plant? A. I don't know.

Q. You don't know?

A. I don't know anything about that one.

Q. The Monarch Gasoline Company?

A. The Monarch Gasoline plant is over there too.

Q. That is at Jenks, the Eagle Gasoline Company?

A. They are not at Jenks but are in that neighborhood, probably five or six miles.

Q. The Totum Gasoline Company? A. Yes, sir.

Q. That is right in Jenks? A. Yes, sir.

Q. The Motor Fuel Company? A. I don't know.

Q. Where is the Chesnutt & Smith Company, at Kiefer, or at Jenks? A. Kiefer.

Q. That is at Kiefer? A. Yes, sir.

Q. You have visited these plants, many of them?

A. I have visited a few.

Q. What ones have you visited?

A. I have visited the Oil States and I have visited the Chesnutt & Smith.

Q. Is their process of making casinghead gasoline similar to your process?

Mr. Diggs: We object, it is incompetent, irrelevant and immaterial, and on the further ground that the witness is not shown to know the process of these other parties.

Mr. Chambers: I am asking him if he visited them, and of course if he don't know he can say that.

The Court: Do you know by what process those other plants there make their commodity? Do you know whether they are compression?

A. Compression process I believe.

Q. That is, it is a similar plant to yours at Jenks?

A. It is compression process, that is what we have at Jenks.

The Court: And these other plants are compression plants?

A. Yes, sir.

Q. What is generally the vapor pressure of your casing-head gasoline that is produced at Jenks?

A. Well, it all depends. When it is ready for shipment it is ten pounds or under.

Q. In other words, for the purpose of shipping in ordinary tank cars, it is necessary that the pressure be below ten pounds? A. Yes, sir.

Q. And is this gasoline that is manufactured at Jenks generally or frequently when it comes out—when it is ready for shipment without any process whatever, is it under ten pounds?

A. Never had any without any process, we had to weather it there.

Q. In other words you have to weather—you don't weather it all?

The Court: What do you mean by weathering?

Mr. Chambers: I was just going to ask him that question.

A. We had to steam it and get the higher vapors off of it in order to reduce the vapor pressure.

Q. In other words, what you mean by weathering, you expose it to the atmosphere and the higher volatile vapors come off and that reduces the vapor pressure so that under the regulations of the railroad company you can ship it in the tank cars which they designate?

A. Not only that, but we have to steam it, heat it up and get these higher vapors off of it.

Q. You don't always steam it either?

A. Invariably, yes.

Q. Invariably you steam it, since when have you been doing that? A. Since the plant was built.

Q. That was the purpose of steaming it to accelerate it or quicken the evaporation of these vapors, that is the only purpose?

A. You can't weather it off in cold weather without steaming it.

Q. Not so much in cold weather as in warm weather?

A. Not sufficient to ship it in extended cold weather.

Q. That is if it was extended cold weather?

A. You couldn't reduce the vapor pressure sufficiently to ship it.

By the Court: What do you mean by extended cold weather, what degree do you mean?

A. I don't know exactly how long it would take to weather it, probably two months.

By the Court: What do you mean by cold weather, what degree?

A. Freezing weather.

Q. In the summer time the evaporation is very rapid without any steaming whatever. A. Yes, sir.

Q. Now then, and it might come in this connection—you say you weather this down to ship it in these particular cars to below the ten pound vapor pressure?

A. Yes, sir.

Q. If it is above the ten pound vapor pressure, how is it shipped. A. We don't ship it.

Q. You don't know anything about how it is shipped if it is above that, you don't know the regulations?

A. Yes, sir.

Q. You then ship it as liquefied petroleum gas, don't you, if it is above the ten pound pressure?

By Mr. Swacker: We object to the form of the question, we are willing for him to testify what the regulations are but the witness has just stated we never ship any above ten pounds and consequently never use the rates.

By Mr. Chambers: Let me strike that question, please.

Q. You say you do not know what the regulations are with reference to the shipment of the commodity if it is above the ten pound pressure? A. I know some of them.

Q. You don't know what other people use that ship it if it is above the ten pound pressure. A. Yes, sir.

Q. You know they ship it as liquefied petroleum gas if it is above the ten pound pressure?

A. In insulated tank cars.

Q. That is in accordance with the regulations of the tariff rates as well as the regulations of the interstate commerce commission? A. Yes, sir.

Q. That is your understanding. A. Yes, sir.

By the Court: Ship it as what?

By Mr. Chambers: Liquefied petroleum gas if it is above the ten pound vapor pressure.

Q. Now, after the 2nd of December, 1916, you say you shipped this commodity at Kiefer that was blended as unrefined naphtha to Port Arthur? A. Yes, sir.

Q. At that same time you shipped this same commodity that was blended to a Shady Side Pennsylvania, as gasoline, didn't you?

By Mr. Swacker: Object to both the form of the *questi* as a deliberate attempt to get out a fact which we insist is irrelevant and to the answer on the same ground that it is utterly irrelevant, the circumstance not being shown as to what the rates and regulations provided to Shady Side.

By Mr. Diggs: Further that it is an assumption that the Gypsy has shipped and that this witness knows.

By the Court: I will permit the form of the question. I have heard the evidence of this witness but I want to see. You say at the same time while you were shipping this product from Kiefer to Port Arthur as unrefined naphtha you were shipping it to the Shady Side plant at Pittsburgh? Now who owns the plant at or near Pittsburgh?

A. Gulf Refining Company.

The Court: And what was it shipped there for, what purpose was it shipped to Shady Point?

A. I am not in a position to say. It was shipped there, that is a distributing point I believe, I have never been there, I don't know what it is.

The Court: I will permit the question to be asked.

Mr. Diggs: We save an exception.

The Court: Very well.

Q. Answer the question. Do you remember the question?

A. That is with reference to shipping to Pittsburgh?

Q. Yes. A. Yes, sir.

Q. And you shipped it as gasoline?

A. Yes, sir, and we shipped it—

Mr. Chambers: Now, I never asked you that.

The Court: If you want to volunteer that, that is a matter for the jury to determine. Go ahead if you want to volunteer an explanation, the court will permit you to do that.

A. We shipped this product to Port Arthur as unrefined naphtha because the tariff gave us a rate to Port Arthur. They didn't give us a rate to Pittsburgh and consequently we shipped it to Pittsburgh as gasoline.

Q. In other words, until the unrefined naphtha rate from your standpoint is put into effect, the designated term for shipping purposes of this commodity is gasoline, that is right?

A. The only term we had for it.

Q. Only term you had for it and shipped it as gasoline for that reason. A. Yes, sir.

Mr. Swacker. Now, we would like to renew our objection to this line of questions and ask that it be stricken out obviously as immaterial and wholly irrelevant it being apparent the conditions were not the same.

The Court: That is a question of fact for the jury to determine. They are the facts and the jury looks into them and sees. I think it is all right to make this explanation to show he is an employee of the oil company. The jury weighs that and weighs the reasons, if there are any reasons, and they weigh it. That is the issue in this case, the way I understand it, if it is properly termed under this tariff 'Unrefined Naphtha.' I will permit all this evidence to go to the jury for them to weigh it.

Mr. Swacker: We want an exception.

The Court: Very well.

Q. Now, at the same time you were shipping it, and after the rate of naphtha was established by the railroad companies, at the same time that you were shipping this commodity as unrefined naphtha to Port Arthur—I will ask you if you were not also shipping it to various places in drums and designating it as gasoline?

A. Not the same commodity, no, sir.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial.

The Court: He has already answered and said no.

Mr. Chambers: Yes, sir, I think he wanted to make an explanation and I would like to have the explanation, go ahead.

A. Shipped the same, but was blended down to a point—

The Court: I will stop you in this statement. I want the attorneys in this case to know I always instructed the stenographer never to put down an objection when the lawyer is sitting down in the court room. So you may lose some of your objections.

Q. If I understand you now, you shipped it as gasoline in drums, but you say that it was a material that had more of the naphtha in it, more of the commodity in it that was shipped from Port Arthur than the commodity that you shipped from Kiefer to Port Arthur, that what you mean, and for that reason you called it gasoline?

Mr. Diggs: I object to that as being irrelevant, incompetent and immaterial, and assuming facts this witness has not stated.

The Court: Unless—I believe I will exclude the evidence as to the drums in the shape it is at this time.

Q. In processes the material that you put in the drum what we called a casinghead gasoline and the product that came from Port Arthur to Kiefer and nothing else was put in it? A. No, sir.

Q. And no other process was gone through, it was merely the mixing of the two products but put in the drum, you put more of the Port Arthur product than you did in the shipments down to Port Arthur. A. Yes, sir.

Q. In tank cars?

By the Court: What period do those shipments cover?

By Mr. Chambers: After December 2, 1916.

A. Not necessarily after.

Q. Well, they were after and before both?

A. Yes, sir.

Q. Now, do you remember why those shipments were made and designated before December 2, 1916, why is it that you can remember that the tank cars that were shipped to Port Arthur were designated gasoline prior to December 2, 1916?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial and argumentative.

By the Court: Yes, I think that is a matter to argue to the jury. I will sustain it on that ground.

By Mr. Chambers: Will you let me say a word?

By the Court: Yes.

By Mr. Chambers: He said he didn't know why it was shipped as gasoline to Port Arthur because he was in the construction department and didn't have anything to do with it.

By the Court: Now, here is the question. In your duties in the construction department did they bring it so you would ascertain how it was shipped in the drum. You can ask him that question. Then you can lay the predicate to argue to the jury. As I understand the rule a lawyer cannot engage in a controversy with the witness. I am going to rule he cannot answer that kind of a question. You ask him now as to why he didn't know how it was billed out in the tank cars prior to December 2, 1916, to Port Arthur, and he said he was in the construction department then and didn't have any opportunity. Now you can ask him how his duties in the construction department brought him in contact with the shipments in the drums so he could know how it was done.

By Mr. Chambers: Well, but he has voluntarily said—



By the Court: Now, I am just showing you I will let you ask those questions but I am not going to let you ask the other way.

By Mr. Chambers: I believe until there are some of these records I want to examine him on later, that is all.

By the Court: Well, you turn him over to the defense, subject—

By Mr. Chambers: Subject to the recall later.

By the Court: Very well, take the witness.

*Cross Examination by Mr. Diggs.*

Q. Mr. Sweet, you say you are the superintendent of the Gasoline plant at Kiefer and Jenks? A. Yes, sir.

Q. And you became superintendent of that plant on December 2, 1916. A. October 1st, 1918.

Q. October 1st, 1918? A. Yes, sir.

Q. Prior to that time you say you were in charge of the construction?

A. While the construction work was going on I was in the capacity of foreman.

Q. Will you state to the jury what construction work is?

A. The erection of the machinery about the plant, and buildings.

Q. That has nothing to do with the production of casing-head gasoline? A. No, sir.

Q. Or the operation of the plant? A. No, sir.

Q. Or the shipping? A. No, sir.

Q. Anything that you might know about how it was shipped prior to the time you became superintendent would be mere hearsay or conclusions that you might draw from a talk around the plant?

A. Merely from what I had learned in the operation around the plant.

The Court: You never saw any of the billing?

A. No, sir.

Q. You, from a scientific standpoint, Mr. Sweet, you know nothing of the proper name for material that comes from Port Arthur to be used in connection with the casing-head gas produced, do you?

Mr. Chambers: We object.

A. Nothing whatever.

Mr. Chambers: What was the answer?

(Answer read by the reporter.)

Mr. Chambers: Well, all right, that saves an objection.

Q. Had you been in the oil business or gasoline business prior to the time you became superintendent of the gasoline plant belonging to the Gypsy that you have mentioned?

A. No, sir.

Q. Are you acquainted with the minutia and facts of the general oil business further or other than the production of the substance called casinghead gasoline by compression plants? A. I am not.

Q. What—and if those were the real matters—do you know what the real matter of the substance produced are, further than they are called generally in loose speech in the country?

A. In general terms in the country.

Q. You said in answer, as I understood you, to a question from Mr. Chambers, that this system at Kiefer was to bring a substance known as naphtha, called naphtha, from Port Arthur to blend with the casinghead gasoline, do you mean to be understood that was the entire system of the preparation for shipping from Kiefer?

A. No, sir, I don't.

Q. Will you state to the jury whether or not that is but one of the steps in the preparation of the article for shipment?

A. That is one, as you stated, one of the steps in the preparation.

Q. Will you state the other steps?

A. The other steps are steaming and weathering it.

Q. Could you give in concise language so the court and jury may readily understand the facts that you gather, or the general name weathering process?

A. Weathering process is a means of raising the temperature of this low product sufficient to carry off the higher vapors which would cause the vapor tension, and this reduces this vapor tension, weathering it reduces the vapor tension.

Q. Does it reduce that tension by causing the evaporation of the lighter or more volatile elements of the materials that are treated? A. It does.

Q. Can you state, Mr. Sweet, the purpose for which the material called here unfinished naphtha, used in blending the casinghead gasoline, whether that is for the purpose of reducing the tension, or as a means of conveyance or retainer of the lighter qualities of casinghead gasoline?

By Mr. Diggs: I am asking if he can state it?

By the Court: How could he know unless he was an expert?

By Mr. Chambers: I want that question if the court please.

(Record read.)

By the Court: Now, I don't see how anyone could answer that question unless he was an expert.

By Mr. Chambers: We object to it for the reason the witness has not qualified himself to answer the question and it is incompetent and immaterial.

By Mr. Diggs: Give us an exception.

Q. You are the superintendent, you say Mr. Sweet?

A. Yes, sir.

Q. This blending is done under your order and direction?

A. Yes, sir.

Q. For what purpose do you put the naphtha in the casinghead gasoline?

By Mr. Chambers: Now the same is objected to for the reason the witness has not qualified himself to answer the question and is asking for a conclusion of the witness.

By the Court: He is an administrative officer, he couldn't testify about the chemical qualities unless he was an expert, he couldn't know any more about that than I would when I hear a law suit tried. I might know but I couldn't swear it was true. Just like a lawyer, he reads chemistry and examines the witness and he knows but yet he couldn't get on the witness stand and swear it. If he did he would be a reckless swearer.

The Court: Now, do you know this—why do you know this, Mr. Sweet. Why do you know the qualities of these component parts when they are applied? What are the effect of them? How would you know that?

A. I would know it from experience.

The Court: What kind of experience?

A. Blending.

The Court: Now, did you have any experience with the blending?

A. Seen it done sufficient times to know it.

The Court: Did you ever help do it?

A. Yes, sir.

The Court: And you have seen the physical fact, the result of it?

A. Yes, sir.

The Court: How much experience did you have in that work?

A. Well, the experience I had there at the plant?

The Court: Well, what period did it cover?

A. Oh, I couldn't say it covered any particular period. It was different times, no particular period.

The Court: Never studied chemistry or anything like that?

A. No, sir.

The Court: Well, I will permit it to go in but I will tell the jury I don't think it is of much weight, in my opinion.

Mr. Diggs: I don't think so either, if the court please. I am asking this line of questions because he was permitted over objection to testify in behalf of the government, about weathering this product and the purpose of weathering it.

The Court: I don't think you objected when he asked him what weathering was. I will permit it to go in but I have told the jury I don't think it is entitled to much weight, but they are the exclusive judges of it and will determine what it is worth.

Q. You stated in your direct examination, Mr. Sweet, that you were superintendent of the Gypsy Gasoline Plant. Will you please state what you mean by that term 'gasoline plant'?

A. Well, it is just generally called a gasoline plant.

Q. You mean a casinghead gasoline plant for production of gasoline?

A. Production of gasoline, casinghead gasoline, generally called a gasoline plant.

Q. You are using the term gasoline in this connection as synonymous with the terms "casinghead gasoline"?

A. Yes, sir.

Q. In reference to these shipments north and south that you have testified about, Mr. Sweet, they were made under your supervision? A. Yes, sir.

Q. This article was shipped by you north and south for the purpose of complying with what you understood to be the traffic regulations and regulations of the bureau of explosives? A. Yes, sir.

Q. You said a while ago that it was shipped in accordance with the vapor regulations of the railroad? A. Yes, sir.

Q. Do you mean to be understood as the railroad prescribing these vapor regulations or they were prescribed by the bureau of explosives? A. Did I say that?

By Mr. Chambers: I said the tariff regulations.

By the Court: If he used that he would mean nat-

urally the railroads would require the rules prescribed or laws to be fulfilled because they would be liable for penalties.

By Mr. Diggs: The jury don't know about that as you and I do.

A. Regulations prescribed by the Interstate Commerce Commission and the Bureau of Explosives.

Q. That is what you mean? A. Yes, sir.

Q. Immediately following December 2nd, 1916, how did you in shipping this material, describe it Mr. Sweet?

A. I am not in a position to say as I did not do the shipping at that time. I was not in charge of the shipping at that time.

Q. Well, following, October, 1918, when you went into charge or superintendent of the plant, how did you describe the article? A. As unrefined naphtha.

Q. Was there any other description by which you shipped it? A. To Port Arthur?

Q. Anywhere—no, to Port Arthur? A. No, sir.

Q. In shipping this to Port Arthur after October, 1918, in connection then with the use of unrefined naphtha, did you use any name also to designate it at the same time?

A. Yes, sir.

Q. What was that name?

A. There were times when we used casinghead naphtha.

Q. When was that you did that?

A. I think that was in December, 1919.

Q. December, 1919?

By Mr. Swacker: Until December?

A. It was in December, 1919, a short period.

By the Court: That was after this indictment was returned.

By Mr. Diggs: I have not really inquired as to that.

By the Court: That would not be competent, if there was any objection by the Government I would exclude that.

By Mr. Chambers: We will object, I was not objecting—but I was not as familiar with the date as I should have been.

By the Court: This indictment was returned in November?

By Mr. Diggs: I am not endeavoring to find out anything after the indictment was returned.

By the Court: No that—what happened after the indictment was returned will not be considered. Now, gentlemen of the jury, when evidence is brought out and I

may overrule it or overrule the objection or not sustains and then afterwards I sustain the objection although I may not especially call your attention to it, in every such instance I have excluded the evidence and the jury are instructed to not consider it for any purpose and that applies to every ruling that has heretofore been made in such respect and this will constitute a general instruction for this case.

Q. Mr. Sweet, after October, 1918, when you became superintendent, and prior to November 2, 1919, in shipping to Port Arthur this substance which we speak of as unrefined naphtha in connection with the term unrefined naphtha in shipping it and billing it, did you use any other term?

A. Not to my recollection.

Mr. Chambers: Just simply for the purpose of calling the court's attention to it, this question extends beyond the time when the shipments were alleged to have been made in the indictment. Not beyond the time of the filing of the indictment, but beyond the time when the shipments are alleged to have been in the indictment. But a portion of this testimony is within the time in the indictment. I think probably it ought to be modified to include the time within the indictment.

Mr. Diggs: Now if the government can step out of time and introduce proof we certainly can on cross examination.

The Court: I will permit them to go up to the time the indictment was returned. Of course the government on re-cross can go in and show that the government has begun an investigation and so on, just as you can come around and make your explanation, but on the face of it I will permit the defense to ask up until the time the indictment was returned, but of course on re-cross it would be permissible to show that a charge had been made, or any suit that was brought anything like that, because if there was a change in the course of any business, then to see what caused that, if it became material.

Q. Did I understand you to say, Mr. Sweet, that after you became superintendent you complied with the rules and regulations of the tariff prescribed by the Interstate Commerce Commission as to the shipping of the articles produced at Kiefer and Jenks?

A. I believe I did, I understood that I did.

Mr. Chambers: I move to strike the answer, and object to the question for the reason that it asks for the conclusion of the witness, and a construction of the Interstate Commerce acts.



The Court: Well, now, I will sustain that. I will permit him to state he attempted to do so and so, but that is a fact for the jury to determine what he did.

Mr. Chambers: Either for the jury or the court.

The Court: That is for the jury to determine under the instructions of the court. He may testify to what he attempted or endeavored to do.

Mr. Diggs: I am just asking the question because the gentlemen went over the same ground and asked the same question before.

The Court: If he asked the same question I will permit you, but I do not recall he asked such a question.

Mr. Diggs: Yes, sir, he stated on direct examination the substance and—

The Court: He volunteered the explanation and they objected to it, and I permitted him to do it. He stated why he did so and so, and on cross examination I will permit you to ask him if he endeavored to do so and so and comply with the law, and I will permit you to go that far, but to say that he did comply with the law and that that was a compliance with the law, that is testifying to a conclusion, substantially to a conclusive fact—a compound fact that is a sort of opinion, but I don't think the rule would go that far.

By Mr. Diggs: Mr. Sweet, in shipping this commodity it was your purpose and intention to comply with the rules prescribed by the Interstate Commerce Commission?

By Mr. Chambers: We object to that as incompetent, and asking for a conclusion of the witness.

By the Court: Now there is certainly some authority on that. Now this defendant is charged with a criminal offense and the question of intent is involved here. Now when the defendant is put on the witness stand can't you ask him why he was doing so and so, and he said I was complying with the law.

By Mr. Chambers: Now the general rule is he can state what he did and it is for the jury to determine what his purpose was from what he did do.

By the Court: That ain't any new question and the defendant can state what his purpose was. He is charged with an offense and he is on trial. These acts are part of the acts for which the defendant is charged thereby obtaining a concession.

By Mr. Chambers: I am not asking any—I am not

taking any exception to his being an employee of the Gypsy Company.

By the Court: Unless you show me some authority I will permit these employees to say that they were trying to comply with the law and that was their purpose in doing that and they were not seeking to obtain any discrimination or a concession as far as they were concerned. It may be that the subordinate might for that purpose be acting in good faith and if a superior officer had a different purpose that is what is going to control.

By Mr. Chambers: I think that is right to but the purpose of the superior officer would control. Of course I cannot lay my hands on the authorities, I may be wrong I am just giving you my best impression.

By the Court: I am just giving my fundamental ideas about it and if you have got any authorities I will re-consider the matter.

By Mr. Chambers: If we can find any authorities we will present them to the court on that proposition. I don't consider them very material.

By the Court: It is not controlling.

By Mr. Diggs: I don't think it is either.

The Court: But now say a man is on trial for murder and the doctrine of self defense is invoked. He testifies, "Now when I shot this man I believed my life was in jeopardy;" he could state that and it is for the jury to look at that.

Mr. Chambers: That is a well settled proposition.

The Court: Why isn't this, the question of intent is at stake; if they didn't wilfully do this with that purpose in view? If it was a civil action, although they made a mistake they could recover this freight, but this is a criminal action.

Mr. Chambers: I suggest there is no contention on the part of the government, and that might shorten matters, that they didn't comply with the safety regulations of the Interstate Commerce Commission, excepting as to the billing of the commodity itself.

The Court: That wouldn't go as to a matter of safety, would it?

Mr. Chambers: This regulation he is speaking about is altogether the rules and regulations of the bureau of explosives and showing the manner in which inflammatory articles should be shipped. Our position is and will be, and it is right that I should state it, that really they

haven't complied with the regulations in so far as describing the commodity itself.

The Court: That would just go as to classification.

Mr. Chambers: That is all, it goes as to classification.

The Court: You don't claim they violated the rules as to safety?

Mr. Chambers: No, sir.

Mr. Swacker: The government concedes that we did comply with the transportation regulations.

Mr. Chambers: Except as to the designation of the commodity that was shipped.

The Court: And that that failure, according to the contention of the government, would only relate as to the rate of freight.

Mr. Swacker: That is what I understand now. We are endeavoring to get from this witness the safety transportation regulations without regard to freight rates requiring a certain description to be applied to this product, aside from the description—

By the Court: I will let him testify that in doing that they acted with the purpose of complying with the law and that is for the jury to determine that.

By Mr. Gann: Your honor, please may the record in this case show that the government does not concede the defendant complied with the safety rules as broadly as counsel states it. We concede so far as the placarding of the cars is concerned that they complied with the rules. We do not admit that the commodity was described in accordance with the rules, and regulations.

By the Court: I so understand and that is the reason I permitted them to ask the question.

By Mr. Chambers: That is what I thought I said.

Q. The court says you may answer the question.

A. It was.

Q. In pursuance of that purpose, Mr. Sweet, in designating this material as unrefined naphtha, did you use in connection with that term, any other term which tended to show the original of the substance, what it was?

A. We did for a time, we termed it as casinghead naphtha.

By Mr. Chambers: When?

By the Court: Between October, 1918, and March, 1919.

Q. Do you remember the date when that was done.

A. I don't remember of any other term being used between those times except as classification 18 24. K appeared.

Q. You just said a minute ago, Mr. Sweet, before we stopped to get the date, that you were using the term 'casinghead naphtha'? A. In December, 1919.

Q. Did you use that term, or an equivalent term, between October—

The Court: Well, not an equivalent term, did you use any other term between what dates?

Q. Between October, 1918, and March, 1919?

The Court: Use any other term now in the shipment of this identical commodity.

Q. Yes, in connection with the term 'unrefined naphtha,' such as gasoline or casinghead gasoline or casinghead naphtha.

A. For a time we used the term casinghead naphtha.

The Court: Now, I will let you refresh his recollection if you have the bills of lading, you may show them to him.

Mr. Swacker: Will the government produce those bills of lading covering shipments from October, 1918, to the last date in the indictment, March 18, 1919?

Mr. Payne: I will get them for you.

The Court: Now, when they recall him you can put this in and look up your papers and have them ready.

Mr. Diggs: We would have them ready if they had not taken them away from us.

The Court: That has nothing to do with it. If they were taken away from you, so far as this jury is concerned they were taken away as a matter of law. If that was wrong that is a matter that can be corrected later.

Q. Mr. Sweet, I understood you to say in answer to a question by Mr. Chambers, that you had shipped to Port Arthur, or West Port Arthur, rather, do you mean to say that you want to be understood as saying that you shipped to any other points than that shown by the bills of lading and shipping orders? A. No, sir, no other points.

Q. Do you know whether those shipments were made to Port Arthur or West Port Arthur?

A. The bills of lading show they were made to Port Arthur.

The Court: Anything further now?

Mr. Diggs: Excepting refreshing—

The Court: Well, when he is recalled.

Mr. Chambers: When you say Port Arthur, your refinery is at West Port Arthur?

A. I have never been down there, I couldn't say where it is situated.

Mr. Chambers: Don't you receive correspondence from there?

The Court: What would be the materiality?

Mr. Chambers: I don't see that it would be.

The Court: The refinery may be at West Port Arthur.

Mr. Swacker: We think the bills of lading are the best evidence of how they were shipped, and they show.

The Court: Well, they were billed to the Gulf Refining Company, were they?

A. Yes, sir.

The Court: How does the indictment alleged?

Mr. Swacker: West Port Arthur.

Mr. Gann: If the court please, that is a rate question which we will show from the testimony.

Mr. Swacker: We object to these statements.

The Court: Very well, that is a matter for the enlightenment of the court.

Mr. Swacker: We except to the statement.

The Court: The jury will not consider anything the lawyers say as evidence on either side.

*By Mr. Chambers.*

Q. Just when you refer to the section of the transportation of explosives that you—

By the Court: Is it admitted that this refinery is located at West Port Arthur.

By Mr. Swacker: Yes, sir, we will admit that the refinery is located at West Port Arthur.

By the Court: And the place where it is located is called West Port Arthur?

By Mr. Swacker: Yes, sir.

By Mr. Chambers: Shall I go ahead— No, you had the witness.

*By Mr. Diggs.*

Q. You look at the paper purporting to be a bill of lading from the Midland Valley Railroad Company dated November 1st, 1918, and particularly in reference to describing the contents of the two tank cars therein. A. Yes, sir.

Q. After inspecting that instrument can you now say Mr.

Sweet whether in shipping the products at Jenks and Kiefer between October, 1916, and March, 1918—1919, did you use any other descriptive term designating the material in connection with the unrefined naphtha?

A. Yes, we do, casinghead naphtha.

By the Court: Now what is the designation of the material to be shipped under the rate which you claim—

By Mr. Swacker: That is exactly what this case involves. The tariff rates unrefined—

By the Court: You are giving me information of an expert, just answer, and give me the information I ask for.

By the Court: I wanted to know just exactly the language so I could keep the matter in my mind as we travel on.

By Mr. Swacker: Unrefined naphtha meaning the schedules covering the rates and charges—

By Mr. Chambers: Of course the court understands the rates on gasoline, casinghead gasoline and unrefined naphtha, there—that is there are rates on all.

By the Court: There was a specific rate as to each one.

By Mr. Chambers: Yes.

By Mr. Swacker: There is not a tariff rate showing specifically casinghead naphtha.

By the Court: Very well.

By Mr. Swacker: We object to the statement being made in the presence of the jury and ask an exception to this.

By the Court: I have instructed the jury they will not take the statements of any of the lawyers as evidence in this case, and admonish them not to consider statements of either side as evidence in this case unless it is done by a solemn admission as approved by the court.

Q. After inspecting this instrument, Mr. Sweet, can you now state of your own knowledge as to whether or not the cars shipped from Jenks and Kiefer had placards on them and how they were placarded.

By Mr. Chambers: Of course we admitted that they did have the placards on them.

By Mr. Swacker: You gentlemen said you would admit it in some cases and in some cases you wouldn't. It is now admitted they were properly placarded to comply with the regulations.



By Mr. Gann: I do.

By Mr. Swacker: The bills of lading bore a stamp on their face stating that these dome placards had been applied throughout the period of time covered.

By Mr. Gann: That the dome placards had been applied to the cars?

By Mr. Swacker: Yes.

By Mr. Gann: We admit that.

Q. Mr. Sweet, can you state under the rules of the Interstate Commerce Commission to what material the dome placards or placards mentioned were required to be affixed?

Mr. Chambers: I object to that as the regulations themselves could be the best evidence and the regulations may be admitted. There is no objection to the admission of the regulations. As a matter of fact they ought to be in.

Mr. Swacker: Do you admit those dome colored placards applied only to cars containing casinghead naphtha?

Mr. Chambers: Casinghead naphtha?

Mr. Gann: The government will admit that the dome placards are necessary only where the tank cars contains any admixture of casinghead gasoline with other petroleum products, or casinghead gasoline alone.

Mr. Swacker: And will you further admit that they were not used only as required under the regulations?

Mr. Gann: Yes, sir.

Mr. Swacker: Then the affect of that admission is that the dome colored placards are permitted to be used and required only on casinghead gasoline or an admixture of casinghead gasoline and something else.

Mr. Gann: In other words, it is casinghead gasoline or contains casinghead gasoline.

Mr. Diggs: You may take the witness.

The Court: The witness may be excused, subject to be recalled on the matters stated by the government for further direct examination.

Witness excused.

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And thereupon D. B. CATTERLIN, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court? A. D. B. Catterlin.

Q. What is your position officially with the Gypsy Oil Company? A. Assistant secretary.

Q. As assistant secretary have you, were you served with a subpoena to bring with you certain books and records of the Gypsy Oil Company?

Mr. Diggs: I object, the subpoena is the best evidence.

A. It was left on my desk.

Q. Did you bring those papers that you were requested to bring by the subpoena? A. Did not see the subpoena.

Mr. Diggs: I object as being incompetent, irrelevant and immaterial, and for the further reason that the records do not show that the witness Catterlin was directed by any subpoena to bring any papers into this court.

The Court: Introduce the subpoena in the record.

Mr. Chambers: You mean the original, I have not got the original.

The Court: Put the duplicate original in if you have one.

Mr. Payne: The original is in the marshall's office—I mean the clerk's office.

Mr. Diggs: If the court please, we have already told these gentlemen what papers they want we will hand them to them—well, if they want to go at it this way on examination, all right.

The Court: You don't seem to agree until you get here in court. Have you the papers.

Mr. Chambers: No, the copies.

The Court: Ask him if as secretary if he has certain papers with him.

Q. The subpoena asked for the original records showing tanks from which blended material was taken, the gravity, the temperature and the color when taken. Did you bring that record? A. I presume the record is here.

Q. You have the record? A. Yes, sir.

Q. Did somebody else bring the record?

A. I turned it over to Judge Diggs.

Q. You brought it and turned it over to Judge Diggs?

A. Yes, sir.

Q. Then were these records, are these records here that were asked for in the subpoena? A. I presume so.

Q. I understood you to say they were not.

Mr. Diggs: You mean you turned the subpoena over to me?

A. Yes, sir.

Mr. Diggs: You don't mean you turned over any papers to me.

A. No, sir.

The Court: Are the papers here the subpoena calls for?

A. I don't know.

Mr. Diggs: We did not know, they are trying to say that Mr. Catterlin is the man to bring them.

The Court: If he is secretary——

Mr. Diggs: He is not the man——

Mr. Chambers: He is served with a subpoena, and they filed a motion to quash——

The Court: Never mind that, they have them here in court, that is, they say they have them.

Mr. Diggs: If you will state what you want——

Mr. Chambers: We want exactly what the subpoena calls for.

Mr. Diggs: What particular ones do you want?

Mr. Chambers: We want all of them for the purpose of inspecting them.

Mr. Diggs: The Gypsy Oil Company——

The Court: You can get them here and have them here this afternoon and inspect them then and go on with another witness.

By Mr. Chambers: Mr. Diggs here is another subpoena to the Gulf Refining Company to bring in certain papers and I don't know who it was served upon but you know whether those papers are here or not?

By Mr. Diggs: Yes, sir, they are here.

By Mr. Chambers: Then we would like to have those without going through the process of putting on a witness.

By Mr. Diggs: Mr. Chambers don't get excited, we have the papers here to produce.

By Mr. Chambers: I beg your pardon, you know I am of an excitable temperament. Haven't I been telling you what I wanted.

By the Court: That is all uncalled for. Just tell them what you want.

By Mr. Chambers: I have told him just what I wanted. It is set forth here in black and white.

By the Court: What it is you want now?

By Mr. Chambers: You may stand aside.

(Witness dismissed)

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By Mr. Chambers: This is the one with Mr. Catterlin and they have a copy of it; they attached it to their motion; this is another one to the Gulf Refining Company.

By Mr. Diggs: We are not disputing service, Mr. Chambers, never have.

By Mr. Chambers: I don't think there is anything between us excepting we don't seem to be able to use language everyone can understand.

By the Court: Just stop all that talking; just talk to the court:

By Mr. Chambers: I beg your pardon, as far as I am concerned.

By Mr. Diggs: Will the court permit us, the Government has Mr. Sanderson subpoenaed as a witness and he is under the rule part of these papers are in his possession and I want him for the purpose of picking out certain classes of the particular papers.

By the Court: Call Mr. Sanderson.

By Mr. Diggs: That is as to the Gypsy Oil Company and I think also as to the Gulf Refining Company, too.  
(Whereupon Mr. Sanderson came into the court room.)

By Mr. Diggs: Will you get me, Mr. Sanderson, the documents covering the shipping of unrefined naphtha from Kiefer, Oklahoma, to Port Arthur, Texas, and shipments of gasoline from Kiefer, Oklahoma, to Shady Side, Pennsylvania, in the cars designated in this matter, have you got those.

By Mr. Sanderson: Yes, sir, what documents do you want?

By Mr. Payne: May it please the court if we would pick out those papers we could take something else up.

By the Court: I suggested we turn these things over to them and have them back here at noon and the suggestion was not followed up by either side.

By Mr. Diggs: Our purpose in proceeding in this way we want to save certain exceptions, being compelled to produce certain papers as they are produced.

By the Court: You turn them over to them and I will let you have the exception. If there are any fundamental principles violated I want you to have an exception.

By Mr. Diggs: I want the record to show the character of papers we are compelled to offer.

By the Court: I think that is all right. Very well, proceed.

By Mr. Diggs: Will you get those papers, Mr. Sanderson?

By Mr. Sanderson: Yes, sir.

By the Court: While he is doing that you can put some other witnesses on the stand.

By Mr. Diggs: The only part I want to save an exception to is certain leases, private business that is what I am reserving. The other stuff we are willing for you to inspect.

By the Court: Has this witness been sworn?

By the Witness: No, sir.

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And thereupon, FRANK ROUTH, produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

*Direct Examination of Mr. Routh by Mr. Chambers.*

Q. State your name to the court and jury.

A. Frank Routh.

Q. Where do you live? A. Drumright.

Q. What is your business?

A. I am superintendent of the Drumright and Shamrock.

Q. You are superintendent of the Drumright what?

A. And Shamrock.

Q. At Drumright and Shamrock? A. Yes, sir.

Q. You are superintendent of the casinghead gasoline plant of the Gypsy Company at Drumright. A. Yes, sir.

By the Court: And also at Shamrock?

A. Yes, sir.

By Mr. Chambers: Shamrock is not—

By the Court: I know but I wanted to get the information.

Q. What is the character and nature of the plant you have at Drumright? A. It is a compression plant.

Q. It is what is known as a casinghead gasoline compression plant? A. Yes, sir.

Q. That is the liquid is taken out of the casinghead gas that is produced there? A. Yes, sir.

Q. Now, in that process of manufacturing or producing this gasoline, I will call it gasoline, the liquid from the casinghead gas, do you use what is known as a scrubber and baffles?

A. No.

Q. You don't use it in that plant, you know what a scrubber is? A. No.

Q. Well, you have heard about it—you know what baffles are? A. I know what a baffle and blade is.

Q. Well, did you use them in your plant; is not a scrubber a place where the foreign substance is taken care of and taken out of the gasoline as it goes through the compressing plant, are you familiar, how long have you been in Drumright?

A. I have been there since June, 1918.

Q. Is that since, when was the plant constructed?

A. I don't know the exact date.

Q. Well, was it just about completed at the time you took charge of it? A. Yes, sir, before.

Q. A little before? A. Yes, sir.

Q. You shipped from Drumright over the Santa Fe?

A. Yes, sir.

Q. You are familiar with the process by which the so-called casinghead gasoline is produced? A. Yes, sir.

Q. Have you ever been through there and examined the plant at Kiefer.

A. I worked in the plant at Kiefer.

Q. You worked in the plant at Kiefer? A. Yes, sir.

Q. Was a scrubber and baffles used in the plant at Kiefer?

A. I worked in the engine room at Kiefer, no scrubber in the engine room.

Q. Is that where you worked up at Drumright, in the engine room?

A. I started as engineer at Drumright.

Q. Now you are the superintendent? A. Yes, sir.

Q. You understand the construction of the plant at Kiefer?

A. In a general way.

Q. Do you know that there are not scrubbers and baffles in the plant at Kiefer?

A. I never saw inside the tanks at Kiefer.

Q. Never did see inside? A. No, sir.

Q. You know that there are not scrubbers and baffles in the plant at Drumright and Chandler?

A. I don't know that they are not.

Q. You don't know what scrubbers and baffles are?

A. I know what baffles are.

Q. You don't know what scrubbers are? A. No.



Q. Well, how do you get off your impurities that is taken up by this gas which comes through the pipes in being transported to your plant?

A. It goes through a tank.

Q. Now that tank, in that tank, the heavy ingredients are separated from the gas, is that right?

A. The heavy oil, yes.

Q. And the oil and water, that is separated from the gas?

A. Yes.

Q. And you have never heard that designated as a scrubber? A. We call them meter tanks.

Q. But that is the purpose of that tank; now do you have your baffle in there too?

A. I never saw inside of the tanks.

Q. You never saw inside of the tanks? A. No.

Q. You are not then so familiar with the construction of that plant?

A. Not the inside of the tank, no.

Q. But you know that in passing through this tank, by some process these impurities are taken from the gas, you know that. A. Yes, sir.

Q. Now then, do you ship commodities from your casing-head gasoline plant to the Gulf Refining Company, consigned to the Gulf Refining Company at Port Arthur?

A. We did.

Q. You did during what period of time?

A. Well, from the time I came there in June of 1918, until the first of 1920.

Q. Then you commenced running it through the pipe line?

A. About that time, I don't know the exact date.

Q. You quit the shipping over the railroads and commenced running it through the pipe line? A. Yes, sir.

Q. That is, through the Gulf pipe lines? A. Yes, sir.

Q. Owned by the Gulf Pipe Line Company? A. Yes, sir.

Q. And it conveys the commodity to the Gulf Refining Company at Port Arthur? A. Yes, sir.

Q. Now, did your commodity which you shipped south from Drumright to Port Arthur consist of the mixing other material that you received from Port Arthur?

A. Yes, sir.

Q. That is, the Gulf Refining Company at Port Arthur would ship it up in tank cars a certain commodity, and would take that commodity and blend it with what I call your casing-head gasoline? A. Yes, sir.

Q. And about what was the proportions of the blend at Drumright of these two commodities?

A. It varied; possibly 35% of naphtha.

Q. That is, you think it would be an average of 35% of naphtha and 65% of what I call casinghead gasoline? A. Yes.

Q. Then you put that in your tank cars and shipped it to Port Arthur. A. Yes, sir.

Q. What is the vapor tension of these south bound shipments to the Gulf Refining Company at Port Arthur?

A. Ten pounds or less.

Q. Ten pounds or less vapor tension. That is to meet with the regulations of the Interstate Commerce Commission and of the railroad tariff regulation? A. Yes, sir.

Q. That is the regulations of the Interstate Commerce Commission and Bureau of Explosives as to the shipping of inflammatory material is copied in and made a part of the tariffs, you know that to be a fact? A. Yes, sir.

Q. And this casinghead gasoline that is produced at your casinghead plant is of a higher vapor tension generally, if not always, than the ten pound pressure required by the regulations? A. Yes, sir.

Q. And you put your naphtha that you get from the Gulf Refining Company into the casinghead gasoline a sufficient quantity to lower that pressure to ten pounds vapor pressure or under? A. To help lower, yes, sir.

Q. Well, that is the purpose—that is, I mean you put it in there to lower it so you may ship it back to the Gulf Refining Company? A. Yes, sir.

Q. That is the idea? A. Yes, sir.

Q. That is, if I understand you, the Gypsy Company manufactures the casinghead gas, the Gulf Refining Company sends up this commodity which you blend with it for the purpose of shipping it back to the Gulf Refinery? A. Yes, sir.

Q. That is, the shipping blend of these commodities?

A. Yes, sir.

Q. Do you weather this blended material before you ship it? A. Yes, sir.

Q. Is that done always for the purpose of lowering the vapor tension? A. Yes, sir.

Q. Do you weather it after you have blended it?

A. Yes, sir.

Q. Do you do that all the time or just at certain times?

A. All the time.

Q. All the time. That is while it is the purpose of the material coming from the Gulf Refining Company to blend it with this to lower the tension, the vapor tension so it can be shipped back, yet in addition to that if what you put in it don't bring it down to the proper tension you weather it?

A. Yes, sir.

Q. Mr. Routh, you were served with a subpoena which requested you to bring certain papers and documents?

A. Yes, sir.

Q. And you brought them? A. Yes, sir.

Q. And you have them here present in court?

A. Yes, sir.

Q. If I understood you you were also connected with the Kiefer plant before you took the Drumright?

A. I was assistant engineer at Kiefer.

Q. Oh, how long were you assistant engineer?

A. From October, '17, till the first of May, '18.

Q. You didn't have anything to do with the shipping?

A. No, sir.

Mr. Chambers: Would you give me those papers?  
(Witness delivers papers to Mr. Chambers.)

That is all.

*Cross Examination by Mr. Diggs.*

Q. What did you say your name was? A. Routh.

Q. In answer to Judge Chamber's question you spoke about taking impurities from the gas that you used for producing casinghead gasoline; as a matter of fact, the only thing you take out of this gas is water isn't it?

A. Some crude oil that might be in the line.

The Court: Some crude oil what?

A. Might come through the line.

*By Mr. Diggs.*

Q. With the exception of taking the water—

By the Court: You mean it comes through the line when they are separated the casinghead gas from the oil?

A. Yes, sir.

By the Court: Go ahead.

Q. The gas itself is not treated for any impurities, it is run through the compressor and compressed. A. Yes, sir.

Q. You make no attempt at the casinghead gasoline plant to remove anything like sulphur or any substance foreign to oil or gasoline? A. No, sir.

By the Court: Let me see—what do they attempt there to remove, water and oil?

A. Yes, sir.

Q. In other words you only attempt in the plant is to get gas in this compressor? A. Yes, sir.

Q. So it will compress and then press the gasoline out of it? A. Yes, sir.

Q. Mr. Roth you spoke something of the purpose of the Gulf Refining Company, in answer to a question of Judge Chambers, in shipping the material in which the casinghead gas is mixed you don't undertake to say you know anything of the business of the purpose of Gulf Refining Company, do you? A. No, sir.

Q. The only thing you know the Gypsy Oil Company orders certain materials and it comes and is delivered to them?

A. Yes, sir.

By the Court: Just a minute. Now this material that is shipped from Port Arthur to one of these casing plants or gasoline plants, whatever you call it, if they pay them for that material, how did they handle that on their books?

A. I don't know.

Q. You don't know? A. No.

Q. You testified, Mr. Routh, in answer to a question of Judge Chambers that the purpose of making this blend was to reduce the tension, the vapor tension of casinghead gasoline? A. Yes, sir.

Q. Is that the sole purpose of making the blend or do you know? A. As far as I know it will eliminate as much loss—

Q. Will you explain to the jury what you mean by the elimination of the loss?

A. I mean that the casinghead gasoline is so high we cannot get it down without a great loss of evaporation and we [ ] naphtha to help that process.

Q. You use naphtha not only to reduce the tension but to act as a container or conveyor or holder of the lighter qualities of the casinghead gasoline?

By Mr. Ganns: I don't believe this witness is qualified to make a statement of that kind.

By Mr. Diggs: You gentlemen got in the purpose of making this.

By Mr. Chambers: That was a physical fact. We object, the witness is not qualified.

By the Court: Test him out and see whether or not he knows and is qualified. How much experience have you had in and around casinghead gasoline plants?

A. Since October, 1917.

By the Court: October, 1917.

A. Yes, sir.

By the Court: Did you ever work in that business before then?

A. No, sir.

By the Court: What had been your business before that time?

A. I was a machinist.

By the Court: How much education in an academic way, have you had?

A. I had a high school education.

By the Court: Study chemistry in high school?

A. Yes, sir.

By the Court: Now you say what has been your position in the plant there in October, 1917?

A. I was assistant engineer.

By the Court: What did you do relative to the mixing of the blend of that process, did you have anything personal to do with that?

A. As assistant engineer.

By the Court: Yes, sir?

A. No, sir.

By the Court: Did you make any study of the effect on the blend what it was put together for?

A. No, sir.

By the Court: I don't believe he knows, unless somebody told him.

By Mr. Diggs: Does the court sustain the objection?

By the Court: I will let it go in and tell the jury in my opinion it is not worth anything.

Mr. Diggs: The defendant excepts to the remarks of the court, and requests the court to also state to the jury that the evidence of this witness in answer to the government's questions as to the purpose of making the blend the same answer.

The Court: I will except as to physical facts, like you stand and see mixing of commodities, except as to opinion. Wherever his evidence relates to anything as a matter of opinion—I will instruct you that I don't believe he knows enough about it as an expert to have any weight in my opinion.

Mr. Diggs: I request the court to specifically instruct the jury that that portion of the witness' testimony in chief saying the purpose for which the material brought

from Port Arthur was mixed, is not entitled to credit and excluded.

The Court: It isn't entitled to any credit except as he may personally know the conduct of the business for such purpose. I will permit you to examine him on that to determine how far that is competent.

*Cross Examination Continued by Diggs.*

Q. Mr. Routh, do you know all the purposes for which the material brought from Port Arthur is blended with the casinghead gas? A. How is that?

Q. Do you know all the purposes for which the material brought from Port Arthur is mixed and blended with the casinghead gasoline? A. Is used? No.

Q. The purpose of making the blend?

By the Court: I will exclude everything that is his opinion. From whom did you get your instructions as to your duty?

A. From Tulsa.

By the Court: From what officer?

A. Mr. Donovan.

By the Court: What relation did Mr. Donovan bear to the plant?

A. He was general superintendent.

By the Court: Did you have any instructions relative to the combining of those two elements or commodities whatever you call them that were shipped from Port Arthur and the compressed casinghead gas?

A. With reference to the proportion you mean?

By the Court: Yes.

A. Yes, sir.

By the Court: I will let them prove the physical facts of what they were instructed to do; that is the physical facts but as to his opinion, as to the effect, anything like that I will take that all away from the jury.

By Mr. Diggs: That includes his declaration about what the purpose was.

By the Court: Except as he may have had instructions from his superior officer. If they told him what the purpose was and that was the reason I will let him state that but not his opinion what the purpose was, and that is all excluded wherever he expresses an opinion independent of testifying to a physical fact.



*By Mr. Diggs.*

Q. Mr. Routh, do you know what the vapor tension of the casinghead gasoline produced at Drumright was as it came from the compressor and before being mixed with the blending material.

A. It varied, it would run from twenty to thirty pounds.

Q. Between those twenty to thirty pounds as a minimum and a maximum? A. Yes, sir.

Q. Do you know what the specific gravity of the material was as it came from the compressor, or about, generally?

A. Well, that would vary from 88 to 90.

By Mr. Chambers: I didn't get the last.

A. 88 or 90 I don't know exactly.

Q. 88 or 90, do you mean by that degrees by the Baume method? A. Yes, sir.

Q. Would it register between those marks, those degrees just taken in the open? A. Yes, sir.

By Mr. Diggs: That's all.

*Redirect Examination by Mr. Chambers.*

Q. Now what is the color of your liquid that comes from the compressor? A. Well it varies.

Q. Well, it varies, what do you mean by that?

A. Well, some of it is darker than others.

Q. Do you take the color of this material, what do you mean by shaking your head?

A. I have no color machine at all.

Q. You just look at it with the eye you mean?

A. Yes, sir.

By the Court: Did anybody have a color machine there?

A. No, sir.

By the Court: Does it look white?

A. Well it looks fairly white some of it.

Q. If it is colored by reason of having any oil or anything in it you don't—you cast that aside don't you?

A. No, sir.

Q. What do you do with it?

A. Ship it to Port Arthur.

Q. Now the only way it could get oil after it comes through the compressor would be from the carelessness in putting it through the compressor and the oil being on some portions of the machinery? A. It would pick up some of that oil.

Q. That would be the only oil in it the oil used in the machinery, this lubricating oil? A. Well, not necessarily.

*By Mr. Chambers.*

Q. What is the color of this blended material, material they bring from Port Arthur? A. That varies some.

Q. It is generally white?

A. Well, I could not say it is white.

Q. It is not yellow? A. No, sir, it is not yellow.

Q. It is the material you put in with the casinghead gasoline and after it is blended it is white, as a general proposition. I don't mean to say there can't be some color in it?

The Court: Let him answer the question.

Q. As a general proposition it is white? A. Yes, sir.

Mr. Swacker: I would like to make an objection because the word white is used as a technical term and can be determined only by use of a color machine made for that purpose.

Judge Williams: He has testified now he did not use any color machine and only way he tested the color was by his eyes.

Mr. Chambers: That is accepted just as far as it goes.

Q. Now did you take the gravity of those north-bound shipments? A. Yes, sir.

Q. About what was the average gravity of those?

A. About fifty-three or fifty-four.

Q. Did you take the gravity of those southbound shipments? A. Yes, sir.

Q. About what was the gravity of that?

A. They varied some, according to the blend, from seventy to seventy-five.

Q. From seventy to seventy-five?

A. Yes, sir, and possibly a little higher.

Q. What would be the general rule of the gravity of the southbound shipments?

A. Seventy-six would possibly be a fair average.

*By Mr. Diggs.*

Q. Mr. Routh, don't you mean white—when you speak of gasoline or oil being white, that is a technical term is it not?

A. Yes, sir.

Q. White then as used in the gasoline and oil business means a liquid, that will appear without discoloration on being subjected to a test of colorization?

Mr. Chambers: We object.

The Court: Do you know that of your own knowledge or by experience or experiment?

A. By experiment.

The Court: Yourself and by experience?

A. No, sir.

The Court: I don't think he has shown enough knowledge. When he testified he saw it and it looked white to him, I don't know—I take it is a term, you say technical term and takes in certain grades—now it would take an expert to swear to it.

Mr. Diggs: It seems to us he was expert enough to say it was white and then he is expert enough now to tell what white is.

The Court: I will let you ask him what he means when he says it was generally white, ask him what he means by that.

Q. You do know or do you not know whether there is a machine for the purpose of determining whether gasoline and oils are white?

A. I know there is a machine. I never had one.

Q. In the use of the term white here do you mean this material was what was known to the trade as white oil or white naphtha? A. No, sir.

Q. But you do mean to say so far as you could discover with the naked eye there was no discoloration? A. Yes, sir.

Q. It looked limpid? A. Yes, sir.

Q. It looked limpid? A. Yes, sir.

Q. And not as a white—

The Court: What do you mean by limpid?

Mr. Chambers: I don't know—

The Court: What do you mean by limpid?

Mr. Diggs: Limpid is a standard word in English meaning clear, free of obstacles and color and a crystal.

The Court: You mean it also looked white, the color was?

A. What I did mean by white is clear.

Mr. Swacker: A color distinguished from opaque.

The Court: You mean that would be transparent and could see through it? A. Yes, sir.

The Court: Without discoloration, when you say white?

A. Yes, sir, it was not black nor it was not yellow.

Q. You don't mean to say it was without discoloration, but without discoloration visible to the eye?

A. That is what I mean.

Mr. Gann: I don't think that is competent——

Mr. Diggs: You gentlemen introduced this technical term.

The Court: That is a matter, I will let you discuss that at the recess. Proceed with the witness.

Mr. Diggs: That is all.

*By Mr. Chambers.*

Q. When you say clear and white you mean it looked like water? A. As far as I can say.

The Court: Stand aside. The jury will be permitted to go now under the instruction of the court to be back here at 1:45 and you will be permitted to go and separate under the instructions of the court heretofore given you and be back here at 1:45. The audience will keep their seats as the jury passes out.

Whereupon, court took a recess until 1:45 P. M.

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AFTERNOON SESSION.

Whereupon, court having convened pursuant to adjournment, and the jury having been called and all found to be present, and counsel for the plaintiff and the defendant announcing they were ready to proceed with the further trial of this cause, the following further proceedings were had, to-wit:

By the Court: Proceed with this case.

By Mr. Chambers: Mr. Morrison.

By the Court: Go ahead.

Whereupon, H. W. MORRISON, a witness called for and on behalf of the United States, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of H. W. Morrison by Mr. Chambers.*

Q. You may state your name to the jury.

A. H. W. Morrison.

Q. Where do you live?

A. I live at Bartlesville at the present time.

Q. Are you connected with the Gypsy Oil Company?

A. Not since May, 1919.

Q. Not since May, 1919? A. No, sir.

Q. Prior to May, 1919, were you connected——

A. I was connected——

Q. With the Gypsy Oil Company or the Gulf Refining Company? A. It was both.

Q. Both? A. Yes, sir.

Q. Now, where were you located at the time, Mr. Morrison? A. Tulsa.

Q. What was the connection of your employment and connection with them?

A. Well, was stenographer and chief clerk to Mr. Donovan, general superintendent.

Q. Mr. Donovan is dead now? A. Yes, sir.

Q. When did he die? A. May, 1919.

Q. May, 1919? A. Yes, sir.

Q. Do you know the position Mr. Donovan held with the Gypsy Oil Company or the Gulf Refining Company?

A. General superintendent of the Refining Company.

Q. Of what?

A. Of the Gulf Refining Company and of the Gypsy Oil Company in Oklahoma.

Q. And do you know to whom, do you know Mr. George H. Tabor? A. I do.

Q. Who is George H. Tabor, I mean with reference to his connection with the Gypsy Oil Company or the Gulf Refining Company?

A. I believe Mr. Tabor is vice president of the Gulf Refining Company.

Q. And to whom did Mr. Donovan as superintendent of these two companies report? A. Mr. Tabor.

Q. As I understand, he was superintendent of the Gasoline Department of both companies? A. Yes, sir.

Q. I refer to Mr. Donovan? A. Yes, sir.

Q. Do you know how the Gypsy Oil Company was making their shipment of their products produced at Kiefer, Jenks and Drumright, during the years, 1916, 1917, and 1918 and up until March, 1919?

By Mr. Swacker: I desire to object to that question and the answer to it for the reasons, first because how they were shipping is a written document and the bills of lading would be the best proof, and second we have been over that and third going back of the dates in the indictment.

By the Court: Read the question.

(Question read.)

By the Court: I will let you prove that but produce these papers now. They object on the ground it is in

writing and I will permit you to introduce those papers like you did yesterday.

By Mr. Chambers: Well can't I prove by this——

By the Court: No, you will have to prove it by the record, they object to it.

By Mr. Chambers: Well, he is not——

By the Court: Show him the records and let him identify them.

By Mr. Chambers: What knowledge he would have would be his knowledge derived from his position as chief clerk in the main office or the office of the superintendent of these plants.

The Court: If they are going to raise the question that papers are the best evidence, then I will let you go into that and introduce the records.

Mr. Payne: All right, we will introduce them by another witness.

Mr. Chambers: Will you permit me to ask another question along that line?

The Court: Yes.

Q. Do you know the name under which these commodities were shipped prior—from Drumright, Jenks and Kiefer—prior to December 2, 1916, and do you know whether at that date, or after, your office gave directions with reference to the manner in which they should be shipped after that time?

A. I do not remember.

By Mr. Swacker: If your honor please, with reference to my objection, I am not trying to be technical in reference to the written papers.

The Court: But you have made an objection on that ground.

Mr. Swacker: Yes, and on the further ground the fact is all proven and this is accumulative. We are willing to make an exact admission of what these papers will show.

The Court: Well, yes, but see here, on cross examination of this witness you went on to show that in some instances it was shipped as unrefined naphtha and in other instances as casinghead gas naphtha. Now, you show the different ways it is shipped, they are entitled to do the same thing, so it is not accumulative because you offered evidence tending to show it was shipped a different way other than refined naphtha or casinghead gasoline and in



addition to that you objected to it on the ground the paper is the best evidence, and where that objection is made I will sustain it and require them to introduce the paper.

Mr. Chambers: Do I understand you sustain an objection to the question I asked?

The Court: He said he did not know.

Q. Do you know the name under which this commodity from Kiefer was shipped to Port Arthur prior to the 2nd day of December, 1916? A. I do not know.

Q. I understand you don't know what the name was under which any of these shipments were billed from Kiefer and Jenks or Drumright to Port Arthur?

A. That is my statement.

Q. That is, from Drumright to Port Arthur?

A. That is my statement.

Q. That is all with the witness.

Mr. Diggs: If the court please, in order to save time—

Mr. Chambers: Just pardon me a moment, there is another proposition.

Mr. Diggs: All right.

Q. Did your office receive a letter from Mr. Ellis, do you know what position Mr. Ellis occupied with reference to the Gypsy Oil Company and the Gulf Refining Company?

A. I believe he was their traffic manager.

Q. Traffic manager for both companies?

A. Yes, sir, I believe he was.

Q. Did you receive a letter while in the office, or prior to December 2nd, 1916, from Mr. Ellis, directing you as to how you should ship the commodity from—

The Court: If you have the letter show it to him.

Mr. Chambers: I have not got it.

The Court: Did you serve notice on them?

Mr. Chambers: We served the subpoena.

The Court: You may ask him then.

A. Not to my knowledge. If we did, Mr. Donovan may have received it, I do not remember seeing it.

Q. Do you remember receiving a letter from Mr. Ellis?

A. No, sir, I got my instructions from Mr. Donovan.

Q. Well, did—you got instructions from Mr. Donovan as to how to instruct these superintendents or assistant superintendents at these various points?

A. Sometimes when he didn't instruct them himself. If

he received such a letter he may have re-dictated it to me and I didn't know the source of his information.

Q. Do you remember instructing the superintendents with reference to the manner in which they should ship this commodity?

A. We had various instructions from time to time. I don't remember of any one instance, no.

Q. You haven't charge of the correspondence of Mr. Donovan's office now? A. No, I haven't.

Mr. Diggs: If the court please, I started to make the statement—we have already admitted that prior to the date the tariff went in for shipping the certain commodity known as unrefined naphtha that this commodity was shipped as gasoline to all points where that tariff was not in force and effect. I assume that is what the government is attempting to prove. If that is so, it is admitted.

By the Court: I don't know what they are after, but this morning you sought to prove, and I believe one witness did testify that that was also billed in some instances as casinghead gasoline and naphtha. If they show it was billed as anything else in due course of business, that would be competent.

Mr. Diggs: We are admitting, if the court please—

Mr. Swacker: The answer to that is this, the witness had testified that after December, 1916, it was billed as unrefined naphtha only. On cross examination we caused him to qualify that testimony by showing that after a certain period, there was added in addition to the description, "unrefined naphtha" on those shipments, the term "casinghead naphtha" as well.

The Court: What they offer would be competent except they were asking about what would be in bills of lading or written shipping instructions, and the objection was made on the ground that the papers would be the best evidence and I sustained it on that ground, and not on the other ground; that it was a repetition, might or might not be.

Q. Mr. Morrison, I want to ask you, probably you didn't understand my question. Mr. Donovan received a letter from Mr. Ellis with reference to the directions giving to Mr. Donovan directions with reference to how these shipments were made?

A. I believe I answered that statement to my knowledge I could not say.

Q. Well, possibly he did.

By the Court: Have you any recollection about it?

A. I have no recollection seeing such a letter.

Q. To refresh your recollection didn't you state to Mr. Stewart a short time ago that such a letter was received?

By Mr. Swacker: I object to that it is an effort to impeach his own witness.

By Mr. Chambers: Just to refresh his memory.

A. I say I may have made such a statement but I don't remember seeing any such letter.

By the Court: What is your best recollection about it?

A. I said that Mr. Donovan might have received such a letter but I don't recollect having seen it.

By the Court: Who opens the mail?

A. Mr. Donovan opens some of it.

By the Court: Mail addressed to Mr. Donovan, who opened it?

A. Mr. Donovan opened it.

By the Court: Did you handle any of it?

A. Some of it.

By the Court: Now what is your best recollection of such a letter having been received by him, have you any recollection at all on it.

A. No, I have not.

By the Court: Have you ever had any recollection at all on it?

A. I have not.

By the Court: Take the witness:

*Cross Examination of Mr. Morrison by Mr. Diggs.*

Q. Mr. Patterson—

By Mr. Payne: Mr. Morrison his name is.

Q. Mr. Morrison, I mean, you stated something about the gasoline plant of the Gypsy Oil Company and the Gulf Refining Company you know where the Gulf Refining Company ever had a casinghead gasoline plant or ever had a casinghead gasoline plant in—

A. Pardon me, I did not get the statement.

Q. You stated that Mr. Donovan was in charge, superintendent of the gasoline, casinghead gasoline plant of the Gypsy Oil Company and the Gulf Refining Company, does the Gulf

Refining Company in Oklahoma have any casinghead gas plants?

A. Not in Oklahoma, the Gypsy Oil Company has in Oklahoma.

Q. You know of any place which the Gulf Refining Company has a casinghead gasoline plant?

A. I was under the impression they did have in Texas and Louisiana.

Q. That is your impression but you don't know?

A. That is my impression.

Q. You also spoke of Mr. Ellis being traffic manager of the Gulf Refining Company and the Gypsy Oil Company, do you know Mr. Ellis occupied any position under the Gypsy Oil Company?

A. No, I don't know that he does.

Q. That's all.

By the Court: Did the officers of the Gypsy Oil Company receive any instructions from him?

A. I could not say as to that, none other than Mr. Donovan.

By the Court: Did Mr. Donovan as an officer of the Gypsy Oil Company receive instructions and directions from Mr. Ellis?

A. He did.

(Witness dismissed)

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By Mr. Chambers: Call Mr. Joseph P. Manson.

Mr. Chambers: Mr. Reporter, identify these please as Exhibits 5, 6, 7, 8, and 9.

(Whereupon, said exhibits are identified by the reporter as requested.)

Whereupon, JOSEPH P. MANSON, produced as a witness on behalf of the Government, having been first duly sworn took the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. Manson by Mr. Chambers.*

Q. State your name to the court and jury.

A. Joseph P. Manson.

Q. Where do you live? A. Muskogee.

Q. What is your business?

A. Chief clerk with the American Railway Express.

Q. Were you ever connected with the Gypsy Oil Company?

A. I was.

Q. And when were you connected with the Gypsy Oil Company?

A. In September and October, 1916.

Q. September and October, 1916?

A. I believe that is when it was.

Q. Were you also connected with them in November, 1916?

A. I believe so.

Q. I am handing you papers identified by the stenographer as Exhibits 5, 6, 7, 8, and 9 and ask you what they are and if you signed them? A. Yes, sir, I did.

Q. What is the date of Exhibit No. 5?

A. November 2nd.

Q. And what is the date of Exhibit No. 6?

A. November 4th.

Q. And what is the date of Exhibit No. 7?

A. November 7th.

Q. And Exhibit 8?

A. November 11th, I didn't sign that one marked Exhibit 8.

Q. What are those papers, the general term?

A. They are bills of lading.

Q. They are bills of lading? A. Yes, sir.

By the Court: Who signed Exhibit No. 8, if you know?

A. Mr. Millard.

By the Court: Who?

A. He was superintendent, assistant superintendent.

Q. Do you know his handwriting?

A. Yes, sir, I believe that is it.

Mr. Chambers: We will offer these in evidence, if the court please.

The Court: Show them to the other side.

Q. What was the year? A. I believe it was 1916.

Mr. Swacker: We desire to object to these as being incompetent, irrelevant and immaterial, they being matters not properly proven as under similar circumstances and conditions, but on the contrary the evidence already in the case showing a different set of circumstances and conditions surrounding it.

The Court: What is that they are offering?

Mr. Swacker. They are shipments before December 2, 1916.

Mr. Chambers: And shipped as gasoline.

The Court: I will admit them.

Mr. Swacker: Exception, please.

Mr. Chambers: May I ask the court, will it be proper instead of reading these—

The Court: They may be considered read and you may call attention to them later.

Mr. Chambers: Then they can be considered as read?

The Court: They may be considered as read. They are only admitted for the purpose of showing the conduct of the business.

Mr. Chambers: That is all.

The Court: And the evidence is already in and the only reason I admit them now is because there was an objection to them and then I am going to instruct the jury they are not to give undue importance to this evidence; that is the reason I excluded them you know.

Mr. Chambers: Of course we have other evidence in connection with that.

The Court: The defense by their objection brought the admission of the papers themselves on themselves.

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Whereupon, MR. RIEDEMAN was re-called to the stand for further direct examination:

*Further Direct Examination of Mr. Riedeman  
by Mr. Chambers.*

Q. You were on the witness stand yesterday and testified in this case? A. Yes, sir.

Q. Your name is Riedeman? A. Yes, sir.

Q. I am handing you a bunch of what purports to be shipping orders and embracing ten shipping orders, marked yesterday as Exhibit 2, and I will ask you to state if those shipping orders were made out by you while you were in the employ of the Gypsy Oil Company? A. They were.

Q. And those were shipments made from—well, I don't know, where were they made from?

A. I will have to look at those.

Q. I don't know where to look.

A. From Kiefer to Port Arthur.

The Court: Where were the other shipments, that other batch from?

Mr. Chambers: Kiefer, Oklahoma, it states there.

The Court: Where to?



Mr. Chambers: Kiefer, Oklahoma, to Port Arthur. Now we will offer these in evidence.

Mr. Swacker: We desire to make the same objection to these as being matters res inter alia, and no proper foundation laid for the introduction, the circumstances already in evidence showing that the rates were different at the time these shipments were made, all being before December 2, 1916.

The Court: I will permit them to be introduced.

Mr. Swacker: We except.

The Court: To show the conditions, and I will instruct the jury later on, and they may be marked and considered as read. Of course, when the question arises and where all the evidence is in, if there is a theory reasonable and in accordance with all the evidence the contention of the defendant as to the change, then that will destroy any evidential presumption that may be raised in favor of the government. I will cover that in instructions later on.

Mr. Swacker: I except.

Mr. Swacker: We may have an exception.

The Court: Very well.

Mr. Chambers: Cross examine.

Mr. Diggs: No questions.

Witness excused.

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Whereupon, FRANK ARCHIBALD TIMMONS, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name.

A. Frank Archibald Timmons.

Q. Where are you employed?

A. Gulf Refining Company, Port Arthur.

Q. What is your position with the Gulf Refining Company at Port Arthur, Mr. Timmons? A. Now?

Q. Yes? A. I have charge of all bulk shipments.

Q. What was your business prior to that?

A. Pump house foreman.

Q. How long were you pump house foreman, Mr. Timmons?

A. I suppose eleven years, I just don't remember, about eleven years.

Q. Ending when? A. August last year, 1919.

Q. As pump house foreman, what were your duties, Mr. Timmons?

A. To see that the oil was properly transferred from storage tanks, agitators, crude tanks and all oil put in proper tanks.

Q. Did you have charge of the unloading from cars received at Port Arthur to the various tanks in the refinery there? A. Yes, sir.

Q. Referring now to shipments from Kiefer, Jenks and Drumright, when those cars arrived at Port Arthur and were placed for unloading, what did you do first in reference to those cars?

A. Well, when the cars were first put on the rack I checked my list to see that the cars corresponded with the cars enroute from these different plants.

Q. Go ahead.

A. Then if we found that the cars on the rack checked with my list we immediately began to get ready to unload.

Q. To get ready to unload? A. Yes, sir.

Q. How did you determine to what tank in the plant the contents of the car would be pumped to?

A. Let's see now, just what do you mean?

Q. Did you make any tests of the contents of the cars from the three points I have mentioned in order to determine what tank you would pump them to?

A. Not necessarily, I did not but the laboratory did.

Q. Who took the sample from which the test was to be made? A. The laboratory boy.

Q. So that upon the arrival of a car and placed there upon your unloading rack the sample would be taken from the car.

A. Each and every car.

Q. And sent to the laboratory? A. Yes, sir.

Q. What tests would be made at the laboratory?

A. Well they test them for gravity and color and then average of the cars would be run for distillation.

Q. Were you advised of the results of the tests made in the laboratory?

A. Either made a practice of going there or calling up.

Q. Mr. Timmons, will you state what tank No. 805, 838 and 857 are used for at Port Arthur?

A. For the storage of unrefined naphtha, for the storage of painters naphtha, storage of a mixture of them all whatever needed for.

Q. Assuming the test of the cars from the three points I have stated were satisfactory, to what tank would the contents of those cars be pumped?

A. What do you mean by satisfactory?

Q. I mean satisfactory according to your own standard?

A. That is only a question just wherever we had room and whatever shipment I was getting ready for.

Q. What would determine you as to what tank you would pump the contents into?

A. That all depended on what I was making.

Q. If you received a car that was off color, what tank would that be pumped into?

A. Now how badly off color.

Q. What you considered off color.

A. That would go into 829 tank.

Q. 829? A. Yes, sir.

Q. What is that tank called? A. Crude naphtha tank.

Q. Was everything that was put into that tank—strike that out—what treatment was given to the crude naphtha that was pumped into that tank No. 829?

A. No treatment at all.

Q. What was your purpose in pumping it into that tank?

A. For re-running it.

Q. What do you mean by re-running it?

A. Put it back in a steam still.

Q. What determines you as to whether you would pump the contents of the car from Kiefer, Jenks and Drumright to the tanks 805, 838 and 857 or 829.

A. Well if you wanted, when it went into 805, 838 or 857 that all depended on what I was making what specification I was making, if it went into 829 it was off color and had to be re-run.

Q. Did you re-run any of the liquid that was put into tank 805, 838 or 857? A. I, no I haven't.

Q. Is the distinction this, that the fluid that was pumped into tank 829 was run through the still later? A. Yes, sir.

Q. The stuff pumped into tanks 805, 838 and 857 was merely blended? Is that correct? A. Yes, sir.

Q. Mr. Timmons, what percentage of the cars received from Kiefer, Jenks and Drumright were pumped into tanks 829?

A. I shouldn't, I didn't figure that up, but it was very small; I wouldn't consider it over—I would have to figure back. I don't know how many cars went through there in that length of time, but I would consider it very small, maybe two per cent; I would say not that much just depends.

Q. Mr. Timmons, did you keep a record of the cars unloaded by you? A. Yes, sir.

Q. Was that record kept by you personally or under your supervision? A. Yes, sir.

Q. What did that record show Mr. Timmons?

A. Well, just showed the car number and the capacity and where she was consigned from and what tank it went into.

Q. Did it show the number of the freight bill?

A. I added that to it, yes, sir.

Q. What was the purpose of showing the number of the freight bill in that record?

A. I had a little trouble with the auditing department. We had a form to go into the office. They would call up and say they didn't get a tank car consigned from a certain place. It was for my protection. They were on my neck all the time. I would say here you are if you haven't got it alright, somebody else has to straighten it out and not me.

Q. When you unloaded the cars did you O. K. the freight bill that was submitted to you by the railroad, that is, O. K. it for payment? A. O. K. it for what?

Q. Payment? A. No, sir.

Q. Did you advise someone else that the cars had been received in order that the freight charges might then be paid?

A. This slip that went into the auditing department, beyond that I knew nothing about it. That did not concern me at all.

Q. But was it the practice of your company not to pay the freight charges until you had given them a record that the cars were received?

A. I don't know whether that was the practice or not, I don't know.

Q. Mr. Timmons, was anything done with the contents of tanks 805, 838 and 857 other than to blend it?

A. Blend it—not to my knowledge.

Q. Mr. Timmons, I show you Government Exhibit No. 10 for identification, and will ask you to state what that is?

A. That is my book that I put these unrefined naphtha cars in; it is the form that I used.

Q. That is your own record as to the receipt of the cars at Port Arthur? A. Yes, sir.

Q. Is that the record that also shows the dates unloaded, and the tank into which the contents were pumped?

A. Yes, sir.

Q. Referring to car No. 1030, unloaded on January 3, 1917, will you state the number of the tank into which the contents of that car was pumped? A. What date?

Q. January 3rd, 1917.

Mr. Payne: That is a car in Count Number One in the indictment, your honor.

Mr. Swacker: What car number?

Mr. Payne: 1030.

A. When did you say it was pumped, when did you say it arrived here.

Q. January 3rd, 1917.

A. There is no record here in this book. I don't see any. You will have to find it for me. No, this 1916, isn't it?

Q. That is in there.

Mr. Payne: May it please the court, it would naturally take a great while for this witness to take up each of these cars, one by one, it is quite important however in our case to show the number of the tank into which the contents were pumped, in order for us to show what happened to the contents of the car after it arrived, and I move the court to order this witness to take this list and check up his books so that he will be prepared to testify in a very brief space of time the numbers of the tanks.

The Court: Is there any objection to this witness being withdrawn so he can refer to these entries made?

Mr. Diggs: No, there is no objection, I don't believe it can be done in a short time, and we will admit all the cars in the indictment received there were put into these tanks.

The Court: They want to prove the identical tank they were put into.

Mr. Payne: It will not take this gentleman over half an hour to go over that.

Mr. Swacker: Suppose you ask the witness, I don't think it can be done in anything like that time.

Mr. Payne: How long would it take you to check up these numbers?

A. Just depends, I have worked over sometimes thirty or forty cars in a half an hour. If there is more cars than that I could not do that in that time.

Q. How long will it take you?

A. All the afternoon.

Mr. Payne: All the afternoon. Well, that is not very long. Is there any objection to that procedure?

Mr. Diggs: None on my part, if the witness doesn't object, I don't.

The Court: Very well.

Mr. Diggs: The government has named certain tanks which Mr. Timmons has testified to.

The Court: All of them were put into one or the other of the four tanks.

Mr. Payne: Not these cars in the indictment. We will show none of that went into 829.

Mr. Swacker: We will concede that. I do not know the fact but we will concede that it may be, that no part of the cars mentioned in the indictment went into 829 and that all the other cars went into some of these three tanks.

Mr. Payne: Will you concede that not one of the cars mentioned in the indictment were not further refined?

Mr. Swacker: I certainly will not.

Mr. Payne: Will you concede that all the cars were merely blended?

Mr. Swacker: We will not make that concession but we insist that blending is refining.

The Court: Will the concession that all the cars were put in tanks other than 829 be made?

Mr. Payne: Provisionally. There is no reason I think of now why that is not all right. With the reservation that we may call this witness back to show that car by car, it may be.

By the Court: There is one thing I want to know for myself, now a shipment from Kiefer to West Port Arthur consigned to Port Arthur. Is West Port Arthur between Kiefer and Port Arthur. Is it stopped in transit. How does it get to Port Arthur on a consignment to the Gulf Refining Company at Port Arthur?

A. Port Arthur is the terminal of the Kansas City Southern Railroad and West Port Arthur is about two miles from the city proper, just a spur runs around to the refinery.

By the Court: Then a shipment that is consigned to the consignee at Port Arthur, this refining company at Port Arthur, is it dropped in transit at West Port Arthur from this point?

A. No, it goes through Port Arthur and then goes out to the refinery.

By the Court: You mean it goes to Port Arthur and then they switch it out to the other place?

A. (No answer.)

By the Court: There are two railroads over there?

A. We are consigning over the K. C. S. There are four or five different ways to get them in there but this is consigned K. C. S.

Q. Mr. Timmons I understood you to say that you had charge of the pumping? A. Yes, sir.



Q. Now would it be possible for any further refining to be done of the contents of tanks of 805, 838 and 857 without the pumping appearing in your records?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and calling for a conclusion of the witness and not a statement of facts.

By Mr. Payne: How so?

By the Court: Now that might be competent as a reason what do you offer this for?

By Mr. Payne: To show that no further refining was done of any of the cars enlisted in the indictment.

By the Court: I don't think that is competent for this reason. Now this book is not being offered in evidence the way I understand it. This book is tendered to the witness for the purpose of refreshing his recollection.

By Mr. Payne: I was going to offer these, I overlooked them.

By the Court: I don't think the book is competent for any purpose.

By Mr. Payne: Except to show unloading and the number of the tanks into which it was pumped.

By the Court: I don't think the books are competent to prove that.

By Mr. Payne: This is a contemporaneous record made by the man who knows and aside from that it is an admission by the defendant. Here is the defendant's own record.

By the Court: I don't think so——

By Mr. Payne: Your honor, that seems to meet every test of documentary evidence.

By the Court: I don't think so.

By Mr. Payne: Here is an original record made in the regular course of business contemporaneously with the fact itself.

By the Court: I don't understand the rule so to be. If you have any authorities to show me the book is evidentiary itself——

By Mr. Payne: It is admissible under the shopkeepers book rule. The shop book where a man——

By the Court: There is no use talking I will not admit the book unless you show me some authorities.

By Mr. Payne: We will get them, there are a lot of authorities.

By the Court: That book, that book, used to refresh his memory and you can make him your witness and tender him this book and ask him the reason why and if he was an unfriendly witness you can use it as a surprise on him but now under the common law rule there was certain limitations to get a shop keeper's book out and that had to be the basis and it looks to me like this is a collateral matter and an incidental matter.

By Mr. Payne: I will say it is not so material to get this in now but they have admitted every car in the indictment went into one or the other of these tanks but at the same time that admits the delivery of these cars in the indictment. Now it is unnecessary for us to prove that they were delivered and received there. Now we will have to show the freight charges were paid on the basis of the lawful tariff rates.

By Mr. Payne: I ask leave of the court to excuse this witness temporarily so we can recall him.

By the Court: You can recall him and then he will be tendered to the other side for cross examination and he will be recalled for that purpose and notation made to that effect and if they overlook it the other side has the privilege of demanding he be recalled for that purpose.

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By Mr. Chambers: If the court please, I don't know just exactly what the conditions are, as I understand it, we asked for certain records and the court ordered those records to be delivered to us.

The Court: You have got the subpoena.

Mr. Chambers: And they haven't been delivered to us.

Mr. Diggs: Which records are you speaking now of?

My Payne: All of them.

Mr. Chambers: The records I have given you the subpoena in regard to.

Mr. Diggs: You have given two; which do you want?

Mr. Chambers: Both of them.

The Court: Take your record and specify.

Mr. Chambers: He said two of them, both of the subpoenas.

Mr. Diggs: Here are the papers (indicating) that we produce in answer to subpoena duces tecum of the Gypsy Oil Company, with the exception these papers do

not include the oil and gas mining leases of the Gypsy Oil Company and of the papers you have, Mr. McGraw? These contain all the papers of the Gypsy Oil Company, itself, and all communications.

The Court: Get your subpoena duces tecum and outline what you want. Let's have a little system about it.

Mr. Chambers: We gave the subpoena to them. I will read it off.

Mr. Diggs: That is the Gulf Refining Company.

The Court: Proceed; proceed, gentlemen.

Mr. Chambers: First, we want a copy of the order of the Gypsy Oil Company to make shipments from the Gulf Refining Company.

The Court: Very well, have you got that?

Mr. Swacker: The witness is out under the rule that has charge of the papers.

The Court: Send for him. Proceed now. Read off what you called for.

Mr. Swacker: This first item that is called for is one by its terms in the possession of the Gypsy and on the Gypsy subpoena.

The Court: Well, if they haven't got them they cannot produce them.

Mr. Gann: Very well, I will read them. Original bill of lading, original invoice—

The Court: Let's get them as you call for them. What original bill of lading now?

Mr. Payne: May it please the court, I just want to make a suggestion to conserve time.

The Court: No, I will conserve the time. Neither one of you are time savers. Go ahead.

Mr. Gann: These are shipments to Pittsburgh.

Mr. Swacker: The trouble with that is, it is in the possession of the Gypsy.

Mr. Gann: No, it is in the possession of the Gulf. The following documents in the possession of the Gulf Refining Company, shipped to Shady Point, Pennsylvania.

By Mr. Swacker: The papers referred to in that connection were burned with the destruction of the plant at Shady Side, Pittsburgh, but there are in the possession of the Gypsy Company and covered by its subpoena the counterpart papers of the same document.

By Mr. Chambers: That is satisfactory.

By Mr. Gann: If we can understand what was burned we can introduce the secondary evidence.

By Mr. Swacker: All of them.

By the Court: They say they have the counterpart, in the Gypsy. Produce them.

By Mr. Gann: First here is copy of order of Gypsy Oil Company to make shipments—

By Mr. Swacker: These are not copies but originals, what was called for on the Gulf subpoena, was a copy retained by the Gulf.

By the Court: These are the Gypsy's originals.

By Mr. Swacker: Yes, sir.

By the Court: The others are originals, too.

By Mr. Gann: The original bill of lading.

By the Court: The way I understand they are copies, both original, called for in each subpoena and the delivery of one exonerates the other unless there is some special reason to the contrary.

By Mr. Gann: The original invoice of the Gypsy Oil Company to the Gulf Refining Company covering these cars.

By Mr. Swacker: Now there are five bundles of papers each of which contain a number of other items besides the items called for on the subpoena. The items called for on the subpoena. The items called for are indicated by red pasters which are attached to the particular bill. I think the numbers of those call for in order to avoid confusion perhaps had better be put on the record they are numbers B1815, S1982, S1973, H1973, and F1996.

By Mr. Gann: Fourth, original showing tank at Shady Side into which the gasoline was unloaded.

By Mr. Swacker: Those were among the records destroyed by fire, so far as anybody has been able to find out.

By Mr. Gann: Fifth, original record showing gravity temperature, and color and other tests at the time of unloading the car at Shady Side.

By Mr. Swacker: The same reply to that.

By Mr. Gann: Destroyed by fire. Six, original records showing transfer from tank referred to in paragraph 4 to the blending tanks.

By Mr. Swacker: All those Shady Side records were destroyed by fire.

By Mr. Gann: No. 7. Original record showing percentage of Kiefer gasoline, blended with other gasoline at Shady Side.

By Mr. Swacker: Same as the other.

By Mr. Gann: All of these then. That is all on the Gulf side which we require.

By Mr. Swacker: We have here sort of a secondary record on that subject which we do not object to furnishing which was made by a manager apparently co-incident to the sale to the department.

Mr. Gann: To the extent of the information shown in here, you are complying with this subpoena by supplying these documents?

Mr. Swacker: No, the documents called for by the subpoena are destroyed. Simply voluntary.

Mr. Gann: These are the records asked for by subpoena duces tecum from Gypsy Oil Company, Tulsa, Oklahoma, the following documents covering shipments of unrefined naphtha from Kiefer, Oklahoma, to Port Arthur, Texas, and shipments of gasoline from Kiefer, Oklahoma, to Shady Side Station, Pennsylvania, in the cars listed below.

Mr. Diggs: The Shady Side part is already delivered to you.

Mr. Gann: Now, as to the Port Arthur.

Mr. Swacker: If there is any such thing as that. There is a record that somewhat answers that description but it seems to me it would have to be explained by a witness.

The Court: Well, you can show what you have and I will pass on it.

Mr. Swacker: What we refer to as being the nearest analogous thing called for in the subpoena are five bunches of engineer's reports, so denominated, I will say, however, they do not answer the description in the subpoena at all.

Mr. Gann: Original record showing the tank in which the casinghead gasoline was taken, also gravity, temperature and color when taken.

Mr. Swacker: In as far as there is such a record, it is in the papers I handed you.

Mr. Gann: Covered by paragraph No. 1, Third, original records showing the percentage of gasoline of the percentage of casinghead gasoline in the cars when loaded.

Mr. Swacker: The same is true as to that.

Mr. Gann: Covering paragraph one. Four, original records showing gravity, temperature and color and the test when loaded.

Mr. Swacker: The same is true as to that.

Mr. Gann: Fifth, original records showing tanks in which—from which loaded into the car.

Mr. Swacker: The same is true as to that.

Mr. Gann: Sixth, duplicate of original shipping orders to agents.

Mr. Swacker: You have already received it in the Gulf subpœna; put it in where it belongs.

Mr. Gann: Seventh, original order of the Gulf Refining Company to the Gypsy Oil Company to make shipments.

Mr. Swacker: You have already received those on the Gulf subpœna.

Mr. Gann: Eighth, copy of invoices to the Gulf Refining Company.

Mr. Swacker: We produced in response to that a bundle of invoices, marked No. 9 Kiefer, 1917, embraces more than merely the invoices called for in this item of the subpœna, embracing other items called for later in the subpœna and the whole are produced in order to be kept in order and will be found when called for later.

Mr. Gann: Also the following documents covering shipments of naphtha and crude unfinished naphtha brought from Port Arthur, Texas, to Kiefer, Drumright, Shamrock, Cleveland and Jenks, Oklahoma, from November 1, 1916, to June 30, 1919, as follows: One, original invoices of the Gulf Refining Company.

Mr. Swacker: Those papers consist of a monthly voucher for each month, beginning with the month of November, 1916, and continuing to and including the month of May, 1919, being monthly settlements.

Mr. Gann: Second, copy of order to the Gulf Refining Company to make shipments.

And thereupon the jury was excused from the court room at their request, and the following proceedings were had in the absence of the jury:

Mr. Swacker: Those consist of periodical orders by telegram, these copies of such telegrams, nine in number.



Mr. Gann: Third, original and duplicate shipping orders to railway agents.

Mr. Swacker: That is not in the possession of the Gypsy at all. Naturally not in the possession of either of them; in the possession of the railway company. There is only one shipping order that we know anything about. We have bills of lading but we don't have any shipping order.

Mr. Gann: Very well, the bills of lading.

Mr. Swacker: That is in the possession of the Gulf. We haven't those here yet.

Mr. Gann: Fourth, original record showing tank into which the product was unloaded on arrival at destination, as shown above.

Mr. Swacker: As far as there is such a record it is embraced in those engineering reports. There are additional reports covering all periods of time. He called for November 1, 1916, to June 30, 1919, Kiefer, Jenks and Drumright; the subpoena was for Kiefer, Drumright, Cleveland and Jenks. There are no counts in the indictment from Shamrock and Cleveland. Certainly entirely irrelevant to this case.

The Court: Well, I will pass on them when they are offered.

Mr. Gann: Original record showing gravity, color and other tests at the time of the arrival at original destination.

Mr. Swacker: As far as there is such a record it is embraced in those engineering reports.

By Mr. Gann: Also the following documents covering shipments of gasoline, unrefined naphtha, casinghead naphtha, and casinghead gasoline from Kiefer, Drumright and Jenks shipped by the Gypsy Oil Company gasoline department to the Gulf Refining Company, Port Arthur, Texas, from November 1st, 1916, to June 30, 1919, as follows, first: Original records showing tanks from which a blending material was taken, also original record showing the gravity and temperature and color when taken.

By Mr. Swacker: As far as that exists they are in the engineer's report.

By Mr. Gann: Original record showing tanks from which casinghead gasoline was taken and also original records showing gravity, temperature and color when taken.

By Mr. Swacker: The same is true as to that.

By Mr. Gann: Third, original record showing the percentage of blending material and the percentage of casinghead gasoline in cars when unloaded.

By Mr. Gann: Fourth, original record showing gravity, temperature and color and other tests when loaded.

By Mr. Swacker: The same is true as to that.

By Mr. Gann: Original record showing tank from which loaded into cars.

By Mr. Swacker: That is the same.

By Mr. Gann: Sixth, copy of invoices from Gulf Refining Company covering shipments.

(Whereupon the jurors are returned back into the court room.)

By Mr. Swacker: Part of those called for have already been produced being called for by one of the previous sections of the subpoenæs.

By Mr. Gann: Also report of the superintendent of the casinghead gasoline plant.

By Mr. Swacker: That consists of six more books of invoices similar to the books under the first called for invoices.

By Mr. Gann: Also reports of the superintendent of the casinghead gasoline plant at Jenks, Kiefer and Drumright, showing daily and monthly from the period November 1, 1916, to May 31, 1919, first, number of feet consumed in the manufacture of casinghead gasoline, second, number of gallons extracted per one thousand feet of that—cubic feet. Third, gravity and color and temperature of blend, where and from whom the gas was purchased. Fifth, where the gas was manufactured into gasoline.

Whereupon, the jury returned to the court room, and upon being found all to be present, the following further proceedings were had in the presence of the jury:

Mr. Gann: Also original duplicate of leases and casinghead gas contracts with incompetent Indians on lands owned by them and under the jurisdiction of the superintendent of the Five Civilized Tribes on November 1st, 1916, to May 31st, 1919, covering the manufacture of gasoline, casinghead gasoline, unrefined naphtha and casinghead naphtha at Jenks, Kiefer and Drumright, Oklahoma.

Mr. McGraw: I have with me all the documents covered by said paragraph in the subpoena, and we don't have in our files any contracts as such between the Gypsy Oil Company and restricted Indians fixing the rate of royalties and providing for the compensation for the royalties for casinghead gas.

Mr. Diggs: You use the word "restricted Indians" to include and cover the word "incompetent Indian" as mentioned in the subpoena?

Mr. McGraw: Yes, sir. I have with me the original oil and gas leases under which the company operates these restricted Indian lands. I also have with me the contracts with the restricted Indians under which the plant is operated on one of the Indian allotments. I have with me our files, office files showing the copy of the statement and a letter transmitting royalties to the superintendent of the Five Civilized Tribes on account of the casinghead gas removed from restricted Indian lands.

Mr. McGraw: We have no map defining the location and boundaries of the sites on which the casinghead gasoline plants are situated. I can from memory or blue print specify where they are.

Mr. Diggs: The Gypsy Oil Company at this time produces, in answer to the subpoena duces tecum, the oil and gas mining leases between it and the incompetent Indians. Also copies of the reports to the Indian Superintendent, but will not surrender possession thereof unless so directed by the court; for the reason that it is apparent from the face of the indictment and the subpoena duces tecum in this case, it can have no possible bearing on the issues raised herein and can only be desired for the purpose of prying into the private affairs of the Gypsy Oil Company; as being incompetent, irrelevant and immaterial to any issues raised in this cause.

Mr. Gann: May it please the court, it is obvious that the government does not wish to inquire into the private business of any corporation, particularly the Gypsy Oil Company and the Gulf Refining Company. The question as to the production of these records has been previously raised by the motion of the defendant, and it is the understanding of counsel for the government that your honor has already decided that question.

The Court: Oh, no.

Mr. Diggs: The court said we could produce them and he would pass on them at the time of their production.

The Court: I will pass on that question now. These are matters of record you could have gotten out of the United States Indian Agency office?

Mr. Gann: Part of them.

The Court: Most of them.

Mr. Gann: These records are subpoenaed from the Gypsy Oil Company, whose headquarters are here in the City of Tulsa.

The Court: I will not require—I will let you inspect them but I will not require them to turn them over to you.

Mr. Diggs: If the court please, the Gypsy Oil Company objects to the order permitting the inspection and now offers Mr. McGraw, the vice president, to produce each of these leases and submit this to the inspection of the court, if it answers their purpose.

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Whereupon, HENRY MCGRAW, produced as a witness, and being first duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

Mr. Diggs: The Gypsy Oil Company now offers for use, by Mr. McGraw, as vice president, any particular oil and gas mining leases covering restricted Indian land that the government may ask for, for submission to the court on the question of relevancy.

The Court: Very well, proceed.

Mr. Gann: The government desires the production of these records for the purpose of showing—

The Court: Well, call for the one you want.

*Examination by Mr. Gann.*

Q. Mr. McGraw, have you produced under subpoena duces tecum the records called for by the paragraph reading as follows: "Also original duplicate of leases and casinghead gas contracts of incompetent Indians, on lands owned by them and under the jurisdiction of the Superintendent for the Five Civilized Tribes, from November 1, 1916, to May 31, 1919, covering manufacture of gasoline, casinghead gasoline, unrefined naphtha and casinghead naphtha, at Jenks, Kiefer and Drumright, Oklahoma?"

A. I have with me all of the oil and gas leases of the Gypsy Oil Company covering such Indian lands under which the Gypsy Oil Company has produced casinghead gas and delivered the gas to its manufacturing plant. We have as such no

contract between the Indian lessor and the Gypsy Oil Company, expressly referring to casinghead gas. I also have with me a contract between a restricted Indian and the Gypsy Oil Company covering a site by which it has built and operates a casinghead gas plant.

Q. Have you those records in your possession now?

A. I do have.

Q. Will you produce them for the court?

By Mr. Diggs: The Gypsy Oil Company objects to the introduction of any of the papers unless the gentleman will specify what particular leases, building, station, contract he desires so we can offer it to the court for the purpose of determining whether or not the Government is entitled to it.

By Mr. Gann: May it please the court before ruling on this question, the point the Government has in mind in asking for all these records is that in the purchase of the gas the extraction of the gasoline contents from the gas and in the settlement of the royalties paid for the gas so purchased and used the Gypsy Oil Company used the language always as referring to—as referring to gasoline and that is the only purpose the Government has in showing an admission on the part of the Gypsy Oil Company that that product was gasoline.

By the Court: I don't think that would be competent against the Gulf Refining Company.

By Mr. Chambers: We have established the fact that the Gypsy Oil Company and the Gulf Refining Company as far as the gasoline is concerned they were working together in every particular.

By the Court: I don't think you have done that.

By Mr. Diggs: We now offer to produce for the court for inspection Departmental leases covering this land so the court can determine whether or not such word is used and such language and we submit all of them to the court for its inspection.

By Mr. Chambers: The evidence in this case has developed the fact that these two companies are working together and we will have of course, further evidence with reference to that proposition.

By the Court: I will not permit it now.

By Mr. Chambers: The purpose, you understand, is if we have provided sufficient evidence to show that the Gypsy Oil Company treated this commodity under all conditions as gasoline—

By the Court: The Gypsy Oil Company isn't on trial No now and I don't know of any such thing as a constructive crime? This is an offense charging intent and the fact that when they dealt with the lessee and referred to it as casinghead gasoline the lawyers probably drew the contract. There are too many elements.

By Mr. Chambers: The lawyers drew the contract but the contracts were signed by the Gypsy Oil Company, and if we haven't we will expect to show that these two companies were working in conjunction in so far as their gasoline business was concerned.

By the Court: Suppose they were. It has made its contract.

By Mr. Chambers: And the gasoline department at Kiefer is under the control of the Gulf Refining Company just the same as it is the Gypsy Oil Company. It is a joint purpose. In other words these lease- are for the joint benefit and the joint purpose of Gypsy Oil Company and the Gulf Refining Company.

By the Court: Let me see one of these lease-, I don't think it is competent.

By Mr. Swacker: I think we are entitled to an exception to this speech making before the jury.

By the Court: No, they are entitled to present their case the same as you are. Whenever the court is ruling on your side you had better let him alone.

By Mr. Diggs: I am adhering to that injunction of the court.

The Witness: If the court please, may I state the terms "casinghead" and casinghead gas. Casinghead gasoline is not mentioned in these departmental leases.

The Court: Now, if these records were not public property and you hadn't had access to them, I would give you a little more latitude. Now, all these departmental leases are of record in the Indian Agent's office. Now, these departmental leases they are on forms gotten out by the Department of the Interior, are they not?

Mr. Gann: Yes, sir. They are public documents in that sense?

The Court: Now what part of one of these departmental leases do you claim would be competent and relevant in this case?

Mr. Gann: I don't know whether this is the same form your honor is reading from or not, but here is one



entered into on the 30th day of April, 1917. I won't give the name of the parties because it might be private matter, but the third paragraph of this lease: "The party of the second part—which is the Gypsy Oil Company—further agrees that it shall extract the gasoline from said casinghead gas, the remainder of dry gas, or so much thereof as may be necessary, shall be returned to the premises above described, for use in operating said oil and gas mining lease."

The Court: Let me see that.

(Mr. Gann hands paper to the court.)

By the Court: Second part.

By Mr. Ganns: The third paragraph your honor of page 2.

By the Court: Page what?

By Mr. Gann: Page 2, third paragraph for the extraction of gasoline.

By the Court: I don't think that is competent, the fact that the contract was conceived that there was gasoline in casinghead gas, if they would extract it from it. I will exclude that character of evidence at this time.

By Mr. Gann: That applies to all of these Indian documents.

By the Court: Yes.

By Mr. Gann: That is all.

By the Court: That is, unless you show me something else. If you show me something else.

By Mr. Payne: May it please the court the Gypsy Oil Company made report to the United States Indian Superintendent at Muskogee, reporting on royalties due to Indians and it shows that they leased lands from the Indians and extracted gas and produced gasoline and that was produced in the same place where they allege unrefined naphtha was produced and the same time reported as gasoline it was shipped as unrefined naphtha.

By the Court: That is true if you had a witness on the stand testifying that it was unrefined naphtha you could ask him that but here the Gypsy Oil Company is not on trial, the Gulf Refining Company is on trial here. Now you say the admission made by the Gypsy Oil Company in matters dealings with the payment of royalties on these—that that could be admitted on trial here as an admission against the Gulf Refining Company? That looks to me like that is hearsay.

By Mr. Payne: The Gulf Refining Company instructed the Gypsy Oil Company to ship and the shipments—and ship it as unrefined naphtha.

By the Court: Yes.

By Mr. Payne: The same shipment—in the same shipment shipped it as unrefined naphtha, the Gypsy Oil Company reports to the Indian Superintendent as gasoline.

By the Court: Not necessarily.

By Mr. Payne: That is why we want to get these leases in to connect it up.

By the Court: There is a legal way to do it. Here—they wrote the leases, say now the Gulf instructed the Gypsy to bill this out as unrefined naphtha. The Gypsy did that—

By Mr. Payne: Billed it all, billed all of their production that way.

By the Court: I will let you prove now that they billed out the same way to Pittsburgh but why—I do that on the theory you have evidence here that they have a joint traffic man but there is not any proof here that this joint traffic man directed these payments to be made. No, I don't think that is competent.

Mr. Payne: Here is our theory for your honor's consideration, that the Gypsy Oil Company was practically an accessory before the fact in this concession in that they misbilled the shipment.

The Court: But you haven't got them charged with a conspiracy to violate the law.

Mr. Payne: Part of the device whereby the Gulf Refining Company got the concession, and thereby they aided and abetted and were in a joint purpose.

The Court: To my mind I think it is fundamental that that is not competent. If you have any authorities that deal on it I would be glad to hear you, but to my mind that is fundamentally incompetent.

Mr. Payne: Volume sixteen of Cyc under the subject of evidence and admissions and under the subject of conspirators and persons acting together, says that where two or more persons are acting together under a common design, that the admissions of one are admissions against the others.

The Court: Well, now let me see that.

Mr. Diggs: Will the court bear with me a minute? I want to object to statements about conspiracy.

The Court: Oh, they have a right to do that. We haven't time to take that up. You may have an exception.

Mr. Diggs: We have offered twice, three times, in open court, to admit that at certain dates, until this tariff went into effect, we shipped this identical article as gasoline.

The Court: But you always reserve an objection on the ground that it was incompetent. That while the admission was made, that at the same time an exception was reserved to its relevancy. That is in the record.

The Court: Now, the——

Mr. Diggs: If that be true, and the court decides it is relevant then the admission stands.

The Court: But no, I decided it was relevant and granted you an exception, and it is in the record. I made the inquiry at the time I excluded those instruments when you reserved an exception at that time, whether or not you made the exception on the ground it could be proved and you said not, so today when it came back and you raised that exception I let them put that in there. I just want to work this out. Now the declarations of conspirators, that would have to be within the scope of the conspiracy, wouldn't it?

Mr. Swacker: Certainly, if there were such a thing, or attempt to prove that.

The Court: This is not a conspiracy, they are not charged with a conspiracy, and even if they were, the declarations would have to be within the conspiracy. Now here is the paying of rentals, and the language used there, I don't think it is competent.

Mr. Payne: The Gypsy Oil Company, under the contention of the government misbilled these shipments, which was the means by which the Gulf Refining Company paid less than the gasoline rates. Now can the Gypsy Oil Company misbill these shipments as unrefined naphtha and at the same time report the same thing to the Indian superintendent as gasoline?

The Court: The Gypsy is not on trial, that might be admissible against the Gypsy, but the Gulf is on trial. Now the only theory that I let in the way they billed them to the two places is because the evidence in this case tends to show that they had a joint traffic man and for that reason that now there ain't any evidence to show that this

joint man had anything to do or any direction about the remittance of these royalties.

Mr. Payne: It is true, your honor, that the rule is that the statements and admissions must be within the scope of the common design, and if your honor thinks this is outside of that we will not offer them.

The Court: I do not think that it is competent.

Mr. Gann: There are some further documents to be produced out of this subpoena, we had not reached yet when the question as to the royalties came up. These additional papers are asked for in the subpoena. Also office copy of all reports of the auditor of the Gypsy Oil Company, gasoline department, to L. H. Haskell, General Auditor, Pittsburgh, Pennsylvania; then the ledger, recording same, showing the quantity and value of the gasoline, unrefined naphtha, casinghead gasoline and casinghead naphtha manufactured at Jenks, Kiefer and Drumright, Oklahoma, from November 1, 1916, to May 31, 1919.

By Mr. Swacker: We have here in response to that, vouchers that are the nearest in description to that that we know of, the report concerning the matter but we have not the ledger here. Nothing in the record to contradict the voucher. They contain all the information that they possibly could.

By Mr. Gann: Also all letters signed by Mr. Ellis, addressed to W. P. Donovan relative to rates and transportation of gasoline, unrefined naphtha, casinghead naphtha, and casinghead gasoline from Jenks, Kiefer and Drumright, Oklahoma, from January 1st, 1914, to May 31st, 1919.

By Mr. Swacker: We produce 41 letters or telegrams in response to that, 41 sheets.

By Mr. Gann: Also all correspondence, both by letter and telegram between W. P. Donovan and C. B. Ellis relative to the rules and regulations covering the transportation of explosives or other dangerous articles in interstate transportation from September 1, 1917, to May 31, 1919.

By Mr. Swacker: 55 pages of letters and telegrams produced in response to that item.

By Mr. Gann: Also all correspondence both by letter and by telegram between C. B. Ellis and W. P. Donovan relative to the transportation of gasoline, unrefined naphtha, casinghead gasoline and casinghead naphtha from Jenks, Kiefer and Drumright, Oklahoma, from January first, 1914, to May 31st, 1919.

By Mr. Swacker: 37 sheets of letters and telegrams produced in response to that.

By Mr. Gann: May I suggest to the court that these documents have been produced under subpoena and they are very voluminous. The government counsel and its assistants have not been able to yet examine these records because they have been just produced. Will the court permit the government counsel to remove them to the quarters in the Federal building now occupied by them for the purpose of inspecting and preparation for witness in testimony in connection with it.

By Mr. Diggs: We object to the request of the government on the grounds that they are the papers of the Gypsy Oil Company—

By the Court: I order these statements put in the custody of the clerk and you may examine them in the custody of the clerk. They are then in the custody of the court. I will give them an opportunity to examine them while in the custody of the court.

By Mr. Diggs: The Gypsy Oil Company objects to being compelled to surrender these or its private papers to anyone. The clerk or the court or anyone else and here offers to produce by witness that will identify the letters, any particular letter that the United States may call for subject to the order of the court as if it be admissible in evidence.

The Court: Well, I will overrule that, the Gypsy isn't on trial. I will not turn your private papers over to the opposing side but while they are in the custody of the court I will give them an opportunity to examine them.

Mr. Swacker: We think we should have an exception on the part of the Gulf Refining Company. You have stated that having a common traffic manager you are admitting it on that theory. Many of the papers are papers passing between them.

The Court: The clerk will keep these papers in his custody and I will not permit them to leave his possession without an order. But while they are in the possession of the deputy clerk, one of these attorneys may examine these papers.

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And thereupon, G. C. WEDDELL, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. What is your full name? A. G. C. Weddell.

Q. Were you agent of the Texas and New Orleans Railway at Port Arthur, from May, 1916, to April 1, 1919?

A. Yes, sir.

Q. Were you joint agent at Port Arthur for the Texarkana and Fort Smith Railway and the Texas and New Orleans Railway, from April 1, 1919, to May 31, 1919?

A. Yes, sir.

Q. You were there after that, but I just wanted to cover up to that date. As such agent did you collect freight charges on shipments consigned to the Gulf Refining Company?

A. Yes, sir.

The Court: Now he is agent of what railroad company?

Mr. Payne: He was joint agent of both railroads during the——

The Court: What railroads?

A. Texas and New Orleans Railroad and the Texarkana and Fort Smith Railroad.

The Court: Well, the Texarkana and Fort Smith, that is a part of the Kansas City Southern?

A. Yes, sir, the Texas branch.

Q. The Texas branch of the Kansas City Southern. Were you agent at Port Arthur or West Port Arthur?

A. Port Arthur on the T. & N. O. and at West Port Arthur on the T. & N. O. also.

Q. You had jurisdiction over both cities?

A. Yes, sir, that was until February 1, 1919.

Q. As such agent do you collect freight charges from the Gulf Refining Company on shipments consigned to them?

A. Yes, sir.

Q. Have you examined your cash book with reference to the determining the amount of freight charges collected on a list of shipments, list of cars, stating the car number and initial, which we handed you?

A. I have examined the cash book that covered that period.

The Court: Now you will have to identify the cars to get it into the record.

Q. Have you that statement with you?

A. I have the statement, yes, sir, it shows the date of shipment, the date of payment and the amount of payment and the car number and initial.

The Court: You had better identify that as an ex-



hibit so you can put it into the record without taking the trouble to call off each one of them.

Mr. Payne: I make this statement, that the original record from which this statement was tabulated are quite voluminous but are here and are subject to examination by the other side, and with that explanation I offer this statement marked Government's Exhibit 15 in evidence, as showing the amount of freight charges collected from each car in the indictment.

The Court: No, if they object to it it is not competent, but you have a list of cars on the exhibit and you can ask him if he examined as to those cars. Then that can be put into the record. Then he can testify whether he made it in his own handwriting and you can use that memorandum there to testify by.

By Mr. Diggs: If the court please, we don't desire to interpose an objection to this as being incompetent and if they will just pick out from here the car numbers mentioned in the indictment and ask the witness if this car number, number so and so, in this indictment the amount thereon paid, we will not object to that.

By the Court: Very well.

By Mr. Payne: You wish to waste the time in taking up each one in the indictment.

By Mr. Diggs: I don't see how else to get at it Mr. Payne. These numbers run consecutively?

By Mr. Payne: Yes, sir.

By Mr. Diggs: If the court please the best way to run this we will agree at present to the admission of this paper and we will examine it to see if it contains any cars not mentioned in the indictment and if it does we can raise the question later.

By the Court: Very well.

By Mr. Payne: We will turn it over to you now, Mr. Diggs?

By Mr. Diggs: We are agreeing to it for the present.

By the Court: May it be admitted as testified to by this witness, that the cars numbered on that paper and the amount of freight shown collected by him from the Gulf Refining Company you admitted he would testify as shown there, and after they *they* have examined it that to be identified as an exhibit and the reporter can let them have it tonight and they can examine it and then if there

is any irrelevant matters they want stricken out they will have the right to raise it by motion.

By Mr. Diggs: Yes, sir.

*By Mr. Payne.*

Q. Can you state generally of your own knowledge that prior to December 2nd, 1916, all cars consigned to the Gulf Refining Company at your station were billed as gasoline and that the gasoline rates were paid on them? A. Yes, sir.

By Mr. Diggs: To which we object, as being incompetent, irrelevant and immaterial and not the best evidence, especially calling for the witness not to be shown to know what the gasoline rate is.

By Mr. Payne: He said he could testify to that of his own knowledge.

By Mr. Diggs: That is not the way to prove the rate.

By Mr. Payne: That every car coming to his station from Kiefer, Jenks and Drumright was billed as gasoline and he collected the gasoline rates, whatever it was.

By the Court: Well, if the books show that as to how it was billed that is in writing. They object to it because this is not the best evidence. I think that objection should be sustained.

Q. Mr. Weddell, can you state from an examination of your records that every car consigned to the Gulf Refining Company at your station after December 2, 1916, from Kiefer, Jenks and Drumright were billed as unrefined naphtha or casinghead naphtha with the words "unrefined naphtha" in parenthesis under it, and that on all those cars you collected freight charges at the unrefined naphtha rate?

By the Court: They have admitted that, they have admitted in the record that all of the shipments after December 2, 1916, were either billed—all shipments of that commodity were billed as casinghead gasoline naphtha unrefined, in substance that, and unrefined naphtha. They have admitted that. I will permit you to testify on what rate you collected because that is not a matter of record. That is a concrete fact; but if they object as to how they were billed and how they were shipped, that is a matter of record.

By Mr. Swacker: They were billed from the period December 2, 1916, until September 1, 1918, plain unrefined naphtha, but with the stamp "Dome cover placards" attached, and after that date "casinghead gasoline 1824K" and "unrefined naphtha" until the last date in the indict-

ment and all the while bearing these same "Dome cover placards."

The Court: Now, you may ask him as to what basis, rate basis, he collected the freight on that.

Q. You may answer the question as the judge has put it.

A. After December 2, 1916?

Q. Yes.

Mr. Diggs: We object to that portion of the question that calls for the witness to say at what rate it was settled at. We have no objection to his stating the amount of money received on these cars.

The Court: Now, if you have got any authority that a witness cannot state they collected all these freights on a certain rate, I will hear you on that. I think that is a concrete fact that the witness can testify to.

Mr. Diggs: We don't think that is the way to prove the rate.

Mr. Payne: We will introduce the tariff for that purpose.

The Court: The tariff is the best evidence, but that would be for the purpose of proving what rate on what basis it was collected, and if he collected under a certain rate or a certain prescribed rate. We cannot tell what the rate was, but my recollection is that is a concrete fact that he can testify to. If he cannot do that you never could get through a trial in a lawsuit.

Mr. Diggs: I would like to have the question read.  
(Question read by the reporter.)

Mr. Diggs: What is the date you refer to?

The Court: That is after December 2, 1916.

Mr. Diggs: We withdraw the objection.

Q. What is your answer?

A. After December 2, 1916, the rate—the freight was collected on the basis of unrefined naphtha as shown in the tariff.

Mr. Payne: May it please the court, I am not clear as to whether the witness was allowed to answer as to the rate he collected on shipments prior to December 2, 1916, from the three points. I will now repeat the question subject to objection.

Q. From the time that you became agent at Port Arthur in May, 1916, until December 2, 1916, can you state of your own knowledge how the shipments consigned to the Gulf Refining Company at Port Arthur, shipped by the Gypsy Oil Com-

pany from Kiefer, Jenks and Drumright were billed? That is, as what commodity and on what rate basis you collected freight charges?

A. They were described——

Mr. Swacker: We object to that as incompetent, irrelevant and immaterial.

The Court: No, I don't think I will let you go into that any further. Now I permit you to introduce certain records in writing to show that prior to that time in the transaction of their business as to certain—as to the same commodity, that they billed it as gasoline.

Mr. Payne: It was just for the purpose of following that up to show it was not only billed as gasoline but the gasoline rate was paid.

The Court: Go and get them and ask them what rate they collected, you have got them, ask them what rate they collected on them.

Q. Referring to Government's Exhibit No. 2, covering shipments from Kiefer, Oklahoma, in November, 1916, and by the Gypsy Oil Company, gasoline department, and consigned to the Gulf Refining Company at Port Arthur and billed as gasoline, can you state what rate was collected on those shipments?

The Court: What basis of rate?

Q. What basis of rate?

Mr. Swacker: As he puts the question, he can or will he?

The Court: He is asking if he can state——

Mr. Swacker: We object to the question as being irrelevant, incompetent and immaterial.

Q. Mr. Weddell, as a general railroad practice——

The Court: No, he has not answered the question yet.

A. The freight charges were collected on the rate, gasoline rate.

The Court: On the rates prescribed for gasoline?

A. Yes, sir.

The Court: The commodity shipped as gasoline?

A. Yes, sir.

Q. As a general railroad practice, did you apply the rate on that commodity if it is billed, that is to say, if the shipment is billed as gasoline would you apply the gasoline rate?

A. Invariably, except where it has been inspected and shows to contain a different commodity than billed.

Mr. Payne: That is all.

The Court: Then you apply the rate that applies to the article the inspection shows?

A. Yes.

Mr. Payne: You may cross examine, I am through with the witness.

*Cross Examination by Mr. Diggs.*

Q. Mr. Weddell, you testified that you had collected the unrefined naphtha rate on all shipments shipped by the Gypsy Oil Company to the Gulf Refining Company at Port Arthur since December 2?

The Court: 1916.

Q. 1916. Is it a fact, Mr. Weddell, that you did undertake to hold out some of these cars claiming a higher rate than the unrefined naphtha rate?

Mr. Payne: I object unless he fixes the period, your honor. I covered only the period from December 2, 1916, to March 31, 1919, which was the date of the indictment, the period covered by the indictment.

Mr. Diggs: I will state the question again.

Q. You did undertake in the year 1919, prior to November 22, 1919, undertake to hold some of these cars on the ground that they were subject to a higher rate?

The Court: Now, after the railroads were put into the hands of the government, I will require you to limit that. I believe this indictment goes up to that period.

Mr. Payne: And beyond. But, your honor, what happened in November, 1919, can have no bearing on this case as the period we cover ends with May 31, 1919, and these gentlemen on the other side have been very particular to limit us to what happened during the period of the indictment itself. It is a well established rule. We have never attempted to show as to what has happened afterwards.

Mr. Swacker: All these subpoenas duces tecum call for more than two months after the indictment. I understood your honor to rule this morning that you would allow evidence on certain matters up to the return of the indictment but not afterwards.

The Court: I have ruled that is true.

By Mr. Diggs: If the court please we can thrash this matter out in a second by stating to the court what I expect to prove and then let him rule on it.

By Mr. Payne: Subsequent to the period no matter what it is it would not be competent.

By the Court: I will hear you state what it is.

By Mr. Diggs: The defendant, Gulf Refining Company, expects to prove by this witness and now offers such proof that some time in the month of July, I think July 26th and up to and prior to November 22, 1919, he undertook to refuse to deliver the cars described unrefined naphtha shipped by the Gypsy Oil Company from the plants of said people at Drumright and Jenks.

By Mr. Payne: We object to the question as leading.

By the Court: He has got a right to ask leading questions, this is your witness.

By Mr. Diggs: To the Gulf Refining Company at Port Arthur and was compelled to deliver said cars to the Gulf Refining Company under said rate by order of the United States District Court at Beaumont in pursuance of an order made in a case in which the Gulf Refining Company was complainant and the Railroad Companies and Walker D. Hines, the Director of General of the railroads, were defendants.

By the Court: You need not answer that question, I will sustain the objection.

By Mr. Diggs: Exception if your honor please.

By the Court: Alright, give him an exception.

By Mr. Payne: No re-direct, your honor.

(Witness excused)

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Whereupon, ARTHUR A. TOPPING, a witness called for and on behalf of the Government, having been duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Arthur A. Topping by Mr. Payne.*

Q. State your full name.

A. Arthur A. Topping.

Q. What is your position?

A. I am in the Bureau of Tariffs of the Interstate Commerce Commission.

Q. Where? A. Washington, D. C.

By the Court: What is your position?

A. I am the rate clerk.



By the Court: Go ahead.

Q. How long have you held that position as rate clerk in the Interstate Commerce Commission? A. 12 years.

Q. As rate clerk, Mr. Topping, what are your duties?

A. We compile rate statistics of tariffs filed by carriers with the Interstate Commerce Commission and quote rates to the public and quote rate statistics and compile rate statistics for the Interstate Commerce Commission in their work.

Q. In other words your entire duties are with and connected with the railroad tariffs? A. Yes, sir.

Q. Have you made an examination of all the tariffs and classifications covering shipments of various petroleum products from Kiefer, Jenks and Drumright, Oklahoma, to Port Arthur and West Port Arthur, Texas.

A. I have.

Q. In December 2, 1916—what was the rate—just a moment—have you the tariff certificates with you?

A. Yes, sir.

By Mr. Payne: I offer these in evidence without identification in view of the certificate of the secretary of the Interstate Commerce Commission only. These are Exhibits 16-20.

By Mr. Swacker: We will have to have some little time to examine them. They are quite voluminous and don't know what they show and have not seen them up until now.

By the Court: You can see whether you object to them on the authentication.

By Mr. Swacker: We will not object to them on the authentication.

By the Court: Let them be admitted subject to objection later on as to the relevancy.

Q. What was the rate of gasoline, what does the tariff on file with the Interstate Commerce Commission show the rate on gasoline from Kiefer to Port Arthur on December 2nd, 1916? A. 33 cents.

By Mr. Swacker: I object, incompetent, irrelevant and immaterial and ask the witness to wait until I have time to object. The tariff is the best evidence.

By the Court: Let him refer to the tariff and let him point it out—I believe that is the rule.

By Mr. Swacker: He is trying to ask the witness to state the rate. I have no objection to him reading any of the certificates of the tariff but that is one thing and this is all together another.

By the Court: He is qualified as an expert.

By Mr. Payne: That is the purpose, to conserve time is all.

By the Court: You follow the law, I will conserve the time, I don't think either of you are time savers.

By Mr. Payne: I qualified him as a tariff expert man and he answered he was.

By the Court: Let him see the tariff and call it to the jury and if there is any technical terms he may explain them as an expert.

By Mr. Swacker: There are no tariff experts, that is a matter of law.

By the Court: Go ahead.

By the Court: Find the rate on gasoline, unrefined naphtha, on the certain rates shown and pointed out and then he can figure out the rate. That gets the predicate before this jury for the other side. The way I understand the rule of evidence is that if I am wrong about that either side can show me.

By Mr. Swacker: We don't contend that he can't read from those papers but we say he cannot testify to any facts either as being a fact or as being in those papers.

By Mr. Payne: Here's the position, the tariffs are now in evidence and here is a tariff expert to tell just what the tariff was.

By the Court: The way to get admissions made is to follow the law. You all look like you are just trying to try the case; you don't look to be trying to get anywhere.

By Mr. Payne: We thought the tariff being in evidence that would be sufficient.

By Mr. Swacker: We are not claiming they are not sufficient, being in evidence because of these certificates—

By the Court: Never mind, I will attend to that.

Q. Read that item please showing the rate on gasoline?

A. Gasoline in tank cars, Kiefer, Oklahoma, to Port Arthur, West Port Arthur, Texas, 33 cents.

By Mr. Swacker: I would like an exception if that is an answer to what has been asked as to what is the rate.

By the Court: What does that rate sheet show as to the rate on gasoline and unrefined naphtha from Kiefer, Oklahoma, on December 2, 1916, to West Port Arthur and Port Arthur, Texas?

A. This particular extract, your honor, shows the rate only on gasoline. It is not unrefined naphtha. I have another abstract showing unrefined naphtha if your honor desires that. This one shows the rate on gasoline from Kiefer to Port Arthur, 33 cents on one hundred pounds.

Q. Now find the rate on unrefined naphtha effective on the same date between the same points? Before you leave that does that rate show the routing there?

A. No, these tariffs are what we call open as to the routing.

Q. What do you mean as to open as to the routing?

By Mr. Swacker: We object to the witness testifying to the contents of a written paper.

A. I mean to say by being open I mean the rate is not confined to a particular routing applying on this particular carriage.

By the Court: Now, in the railroad world when the tariff is silent what does that mean?

A. It means the certain lines that are parties to this tariff and I can read you the lines.

Q. When it is silent what does it mean?

A. It means that it applies over all lines that are parties to the tariff.

Q. Now refer to the tariff and state what lines are parties to that tariff? Read from it.

A. Kansas City Southern Railroad Company, St. Louis, San Francisco Railway Company, St. Louis & San Francisco Railroad Company of Texas, Texas and New Orleans Railway Company, Texarkana and Fort Smith Railroad Company, the Midland Valley Railroad Company was added herein in the Supplement.

By Mr. Swacker: There is no date as to which the witness is now testifying as to when the parties were parties to this tariff.

By the Court: Naturally a supplement would be after that date. Now, when was that supplement made?

A. May I explain? This extract covers the period from January 1, 1913, down to May 31, 1919. It includes a number of complete tariffs and a number of supplements that were effected. Now the Midland Valley was added here. The Atchison, Topeka & Santa Fe are also a party to it—

By the Court: When was it made a party?

A. Effective July 24, 1914. It is a party to all of the tariffs in this extract.

By the Court: Now, what is the date of the Midland Valley?

A. I am looking for that now, your honor. An extract is a very cumbersome thing to testify from anyway.

A. Midland Valley shows, is on May 2nd, 1917. I know it was, I know it was in there before that.

Mr. Swacker: If we had an opportunity to examine those papers we might save time——

The Court: That is out of your jurisdiction now, you are encroaching on my preserves now.

A. That is the first day I see the Midland Valley in there, I would not say it was not shown before that.

The Court: What date is that?

A. First date I notice is May 2nd, 1917. But it is in there I think before that time. These extracts were compiled from books containing four or five hundred pages.

The Court: Turn to unrefined naphtha.

A. All right. Kansas City Southern Railroad, St. Louis, San Francisco, Texas & New Orleans Railroad Company, Texarkana and Fort Smith Railroad Company, and T. & N. O. Railroad Company, the Midland Valley Railroad Company, rate on unrefined naphtha effective December 2nd, 1916, from Kiefer, Oklahoma, to Port Arthur, Texas, was nineteen and a half cents.

The Court: Proceed.

Q. What was the rate on gasoline from Jenks, Oklahoma——

Mr. Swacker: I objected to the form of question, I have no objection to him stating——

Q. What does the tariff show the rate on gasoline from Jenks, Oklahoma, to Port Arthur, Texas, effective during the period, effective February 3rd, 1917?

Mr. Swacker: I object to the form of that question also. I have no objection to him saying what the excerpt he has shown or purports to show in that respect.

The Court: These are the tariffs and I suppose the certificate there shows——

A. It does.

The Court: Read from this if you want to when it was in effect, have him read from the certificate. The only way to get concessions out of the other side is to go down the line. If you ask them to make exceptions as to form, they will not do it, the way to get concession is not to indicate you give a cent whether they made a thousand or not. Go ahead.

A. What date, Mr. Payne, please?

Q. The first date that you find a rate effective February 3, 1917, from Jenks.

A. Effective on January 16th, 1917, the rate on gasoline from Jenks was thirty-nine cents for one hundred pounds.

The Court: Jenks to Port Arthur?

A. From Jenks to Port Arthur, yes, sir.

Q. And also West Port Arthur?

A. That applies to West Port Arthur also.

Q. Did you say the rate from Kiefer on gasoline applies to West Port Arthur according to the tariff? A. On gasoline?

Q. Yes. Well, the record will show, never mind.

A. I don't think it does, without looking back.

The Court: Look back and see. Let's settle that now.

A. It did.

Q. It applied to West Port Arthur?

A. Yes, sir, I have it right here.

The Court: Well, just as well get it from Drumright while you are there.

Q. Did you state the rate on gasoline from Jenks according to those tariffs in effect on February 3, 1917?

A. I did, thirty-nine cents for one hundred pounds.

Q. Now, from Drumright, effective May 2, 1917, the rate on gasoline that those tariffs show?

The Court: Can't you all agree what these tariffs show, can't you agree on that?

Mr. Swacker: It is rather a complicated thing, if we had a little time to examine them, perhaps we can.

The Court: Suppose we let them have these tariffs tonight and see if they cannot agree to them and recall this witness in the morning as to any other matters that may be necessary to examine him on?

Mr. Payne: All right.

The Court: The witness then may be excused. Turn them over to the reporter and let him mark them as exhibits and then the reporter will let them be withdrawn by counsel for the defendant tonight so they may examine them.

Gentlemen of the jury, you will be permitted to separate under the usual instructions and caution that I gave you yesterday. You may go now until tomorrow morning at nine thirty o'clock. The audience will keep their seats as the jury files out.

Whereupon court took a recess until tomorrow morning at nine-thirty o'clock.

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(Whereupon, court met pursuant to adjournment, the same parties appearing as heretofore, the Honorable R. L. WILLIAMS, Judge, present and presiding, and the jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed the following proceedings were had and the following evidence offered and introduced, to-wit:)

By Mr. Gann: If your honor please, the defendant yesterday produced certain records in response to a subpoena duces tecum. It is my understanding that they had produced all the records called for from Port Arthur but in checking up the various voluminous papers in custody of the clerk last night we find there are some additional papers that have not been produced.

By the Court: Have you given them a memorandum.

By Mr. Gann: We took it up with counsel and they say they haven't been called for.

By Mr. Swacker: We have them here and as soon as we get a key we will get them.

By the Court: Call your witness. Now none of the witnesses in this case will be excused on either side until the matter has been brought to the attention of the court.

By Mr. Diggs: In reference to Government Exhibit No. 15 can we have the stenographer refer to that and see what it was the government wanted me to admit?

By the Court: How?

By Mr. Diggs: In reference to Government Exhibit 15 can I have the stenographer refer to the record and see what it was the government wanted me to admit?

By the Court: Admit just like it was sworn, to just like the questions were propounded and answers made.

Mr. Diggs: In reference to Government's Exhibit No. 15 the defendant admits that such exhibit may be treated with the same force and effect as if the original books showing the entries thereon were produced in court; and admits further that the amount shown therein to have been paid by the Gulf Refining Company to the railroad company, for the purposes of this trial are admitted to be true; limited for the purpose of this trial because the



figures are not exactly accurate, but for the purpose of this trial we will admit they are true and are the sums paid.

Mr. Diggs: If the court please, in Government's Exhibits 16, 17, 18, 19 and 20, the defendant admits that the excerpts shown therein from the tariff are true copies of the tariff and may be taken with a like effect as if the tariffs were introduced, in so far as the same covers the rates on unrefined naphtha and gasoline, but do not admit the truthfulness or relevancy of that part of the exhibit which do not purport to be a part of the tariff.

The Court: Proceed.

Mr. Payne: Call Mr. Topping—no, call Mr. Timmons.

Mr. Swacker: We understand those are now admitted in evidence over the objection which Judge Diggs made as to the matters not direct excerpts as to the rate on this gasoline and unrefined naphtha?

The Court: What is in there that you object to?

Mr. Swacker: There are matters not purporting to be excerpts from the tariff.

The Court: What is that?

Mr. Swacker: Statements of the commission.

The Court: What statements?

Mr. Swacker: Statements in the certificate on the face and on each of the sheets a statement by way of preface.

The Court: Point it out.

By the Court: Go ahead and examine this witness.

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Whereupon, F. A. TIMMINS, was recalled by the Government for further examination:

*Direct Examination of Mr. Timmins by Mr. Payne.*

Q. State your name, please? A. F. A. Timmins.

Q. Are you the F. A. Timmins that testified in court here yesterday? A. Yes, sir.

Q. You testified yesterday in reference to cars that were unloaded at Port Arthur, that samples were taken from those cars to the laboratory. Now did you have samples taken from the different tanks in the refinery and were those samples also tested in the laboratory?

A. Yes, sir, samples from these tanks were taken every

day and possibly two or three times a day, just as the case required it.

Q. Was that every tank in the refinery?

A. All the finished tanks were taken, and these gasoline were taken and sampled every single day.

Q. I will limit my question to the light oils? A. Yes, sir.

Q. Samples were taken from the tanks by whom?

A. The sample boy.

Q. What did he do with them?

A. He carried them to the laboratory.

Q. And the laboratory made such tests? A. Yes, sir.

Q. What were those tests, Mr. Timmons?

A. Well, what grade of oil you are speaking of, light oils, now?

Q. Yes, sir?

A. Well, the distillations were taken and the gravity taken and the color taken.

Q. Were you advised of the results of the tests?

A. Yes, sir, either telephoned there or went there; as the books were open to my inspection.

Q. And then did you designate as to how the fluid in the tanks should be listed in your records?

A. That depended upon the specifications, whether it met the requirements or not.

Q. What determined you as to whether you would instruct—

Q. Who made the entries in the record as to what was in a particular tank, or in all the tanks containing light oil?

A. What records do you mean?

Q. Your record of daily tests?

A. Quite a number, lots of them.

Q. I don't mean for you to give me their names?

A. Laboratory tests.

Q. Inspectors?

A. Well, class them as inspectors, yes, sir.

Q. Well, now did you instruct the inspectors as how they should enter, what they should call the fluid in a particular tank?

A. Not generally unless I went in and found a tank I wanted to have the name changed, they didn't just call right, maybe the stock would call for shortage of oil where we knew we had it and the stock wouldn't show it.

Q. Never mind about that, you are too far afield. Then inspectors themselves had certain instructions as to how they would enter the different oils in this test sheet?

A. I judge so.

The Court: You know so, whether they did?

A. Well, I can say yes to that.

The Court: Go ahead.

Q. Referring particularly to tanks 805, 838 and 857, which yesterday you testified, if I remember correctly, were blending tanks what determined the inspectors—that is, by what standard, what standard would they apply in pronouncing the fluids in the particular tanks to be naphtha or gasoline?

A. I don't know whether they would have the right, whether it would be left to the officers to determine that. I determined on the specifications.

Q. Just a moment, would you mind speaking a little louder in your answers, there is a lot of noise and I am sure the jury cannot hear you, I cannot, repeat the answer.

A. Their ideas and my ideas and other persons' ideas might not—other persons might not have the same idea of the same grade of oil, and that would depend on the specifications.

Q. Did the gravity determine anything?

A. It did, yes, sir.

Q. What did it determine?

A. Either too light or too heavy.

Q. I mean in reference to what you would pronounce the oil in a particular tank was?

A. No, it would not, it would class—it could be classed as a gasoline, unfinished or finished.

Q. Suppose the gravity was fifty-seven or higher, what would you or the inspectors designate the commodity as?

A. It would mean nothing to me unless I knew the specifications for distillation.

Q. Suppose the gravity was fifty-six or lower?

A. Same there.

Q. Well, state what the specifications were, Mr. Timmons, by which you pronounced the liquids in a particular tank to be gasoline or naphtha?

A. Well, there are so many specifications, it would just depend on what the orders were I was required to fill.

Q. When the stuff was in the tanks were you making anything? A. No, sir.

Q. You were just making a report of what was in it?

A. Yes, sir.

Q. You would take a test of a particular tank and you would make an entry in your books, gasoline or naphtha or painter's naphtha? A. Yes, sir.

Q. Now, how did the inspectors know, and how did you know as to what you would call that product?

A. I was governed entirely by what specifications I was to make, that is the way I got it.

Q. Well, now hold on, you were not making anything from

the stuff in these tanks, you were just determining, were you not, what was in the tank?

A. Well, I don't quite get you, state that over.

By the Court: I will see. Now you would put a certain commodity in tank 805?

A. Yes, sir.

By the Court: Well, now you would have that inspected, wouldn't you; well, now when you inspected it would you put it on the books of the inspector that examined the sample in the laboratory; did they note on the books what was in the tank?

A. They put the test on there, whether they knew what it was or not, I don't know.

By the Court: What do you mean by test?

A. Well, the gravity and color and distillation and specification.

By the Court: Go ahead.

Q. Were the inspectors that made these tests under your immediate supervision? A. No, sir.

Q. Under whose supervision were they?

A. The man in charge of the laboratory.

Q. In case of doubt on their part as to how they would test a fluid in a particular tank would they come to you for instructions?

By Mr. Swacker: I object he has said they were not under his instructions.

By Mr. Payne: They may be to that extent.

By the Court: Were the laboratory employees under you?

A. No, sir.

By the Court: Did they ever come to you for instructions part of their duties to come to you for instructions?

A. They would come to me sometime, sometimes they would ask me what happened to the tank. If they did not put it in the same tank what would happen to it and I would tell them.

By the Court: You say—whose duty was it to pass on it and determine what was in the tank, the names given, when it was given, the specifications, and when it was recorded?

A. I considered that would be the laboratory—the man in the laboratory.

By the Court: Go ahead.

By Mr. Payne: Mark this Government's Exhibit 21.

Q. I show you Exhibit 21 for identification and call your attention to the second and third and fourth and fifth and sixth entries which show gasoline—

By Mr. Swacker: I object to his question.

By the Court: Let him get the question in and don't answer until I pass on it.

Q. As to tanks 511, 512, 805, 357 and 922 I will ask you to state to the court if you know how the inspectors, how the inspectors inspected the contents of those tanks to determine the fluid in those tanks was gasoline?

By Mr. Swacker: I object to the witness testifying about the papers, it is not shown he ever saw it or knows anything about it or he made the entries or he had anything to do with it and he testifies the inspector was not under his direction.

By the Court: The question is if you know how they determine that. That is merely for the purpose of identification of a fact, directing the attention of the witness to it. If you know how the inspector determines, by what process to determine whether that was gasoline, if you know that you may answer that.

A. This report is not complete.

The Court: Now you answer the question, do you know how they determined that?

A. I know how they determine it.

The Court: Very well.

Q. State that?

The Court: What is that now?

Q. He says he knows how they determine it, state it then.

A. Well, they take gravity, color and distillation.

Q. Is it not a fact that if the gravity is fifty-seven or above, you designate it as gasoline, and that if it is fifty-six or some few points below, fifty-six or fifty-five, the inspectors designate it as naphtha; if it is between fifty-five and fifty-seven they come to you for instructions as to whether they will designate it as gasoline or as naphtha?

A. They don't come to me for instructions at all. I stated before that was not left to me at all.

The Court: Now, you have answered the first part. You ought not to put so many questions in one. Now you asked him three questions in one, and he answered the last.

Mr. Payne: Thank you for the suggestion.

Q. If the gravity—is it not a fact that if the gravity is fifty-seven or higher, it is the general custom and course of business to designate the fluid in that tank as gasoline?

A. Might be with them, but it ain't with me.

The Court: What was it the custom in that laboratory?

A. The custom shows here that is what they called it.

Q. That is, they called it gasoline if the gravity was fifty-seven or higher? A. Yes.

Q. Suppose that the gravity was fifty-five, what was it the custom to designate it on those sheets?

A. Well, it shows here——

The Court: Well, never mind what is on that sheet. I don't permit what is on that sheet. What did they do, what did the experts in the laboratory whose duty it was to examine the samples, now what did they do, how did they designate it?

Mr. Swacker: I object to that, it is not shown that these are experts, they are boys and under somebody else's instructions; and he is stating what he assumes to be the custom of those boys in making these tests.

The Court: Well, he testified they worked in the laboratory; you would naturally assume that they were experts. What experience did those people that make the tests have?

A. Weighing up the oil and running distillations and taking color.

The Court: Well, did that experience qualify them to do that kind of work?

A. Yes, sir.

The Court: The qualification that is required in the usual oil laboratory for such people. Now I will give you all a chance to cross examine as to qualification if you want to.

Mr. Swacker: At this time?

The Court: Yes, I will permit you just like on voir dire to ask questions, and I will pass on whether they are qualified to do that.

*Examination by Mr. Swacker.*

Q. What is the age of these inspectors you speak of?

A. They run from eighteen, twenty-five, twenty-six and twenty-seven years old.

Q. Are they what you might consider as student chemists?—A. No, sir, not in that department.



Q. Are they chemists at all? A. No, sir.

Q. They merely perform the distillation tests which is a mechanical process? A. Yes, sir.

Q. And put down the instances shown by the distillation test? A. Yes, sir.

Q. They have nothing to do with the classification of the material they test? A. No, sir.

Q. Whatever name they may use or enter, is such as they themselves may adopt without any effort of accuracy as a matter of classification, not such as they may be instructed to?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

By Mr. Swacker: I don't think the entries are admissible—

By the Court: These boys as you call them that work there in making these tests to determine the color and the gravity, they determine the gravity and the color and what else do they determine?

A. They determine the distillation—

By the Court: The distillation, the color and the gravity, now how would they determine it?

A. By weight of the oil.

The Court: They determine the distillation by the weight?

A. Run through an Engler flask.

By the Court: Run it through an Engler flask and that would show the distillation would it?

A. Yes, sir.

By the Court: And then they took the color by what means, by what means did they take the color?

A. Through a machine, two tubes to it, one is empty and the other is filled up with this oil, there is a middle faucet on that and a microscope on the top and by looking through they match these two colors. When both discs match, that was your color.

By the Court: Now there is a distillation, the process of determining distillation and the process of determining the color, now the next is determining the specific gravity, how did they do that?

A. That is by hydrometers and a thermometer.

By the Court: Now their experience in making these tests under the processes outlined by you?

A. Yes, sir, they could do that if they had enough experience they could.

By the Court: Well, were they tested before they were put in there to do that kind of work.

A. They were broke into it, they gradually worked up to it.

By the Court: Now you say they were fitted to determine the distillation and the specific gravity and the coloring. Now how would they determine what it was, where did they get that.

A. That might have been their own conception of it.

By the Court: Now were they instructed as to that by their superior officers who were expert chemists?

A. I cannot say I don't know about that.

By Mr. Swacker: May I ask another question?

By the Court: Yes.

*Examination by Mr. Swacker.*

Q. They had nothing to do with the classifying of this material? A. No, sir.

Q. That was no part of their work? A. No, sir.

Q. All they were there for to determine or ascertain what the distillation was, what the gravity was and what the color was and record that? A. Yes, sir.

Q. And that was the classification so far as any classification was made? A. Yes, sir.

Q. There was no classification by name? A. No, sir.

By the Court: Now, it is competent, after the processes of making these records, I hold the evidence shows they were expert enough to determine the specifications, gravity and the distillation and as to the coloring by these processes. I will let that much go to the jury. Now then you can introduce as to the name of it, you will either have to show that was done by an expert or they were instructed by an expert as to the names to meet the tests to determine by it.

By Mr. Swacker: Then will the court ask the jury to disregard those entries.

By the Court: These entries have not been introduced, the jury don't consider anything except what is admitted in evidence before them. That is merely a predicate thus far and not admitted to the jury and merely shown to the witness for directing his attention to a question.

*Examination by Mr. Payne.*

Q. Now, Mr. Timmons, is it or is it not a fact that these laboratory inspectors had instructions from their superior officers in that department, that when the gravity was fifty-seven or better, and when the distillation test showed a certain initial boiling point and a certain end boiling point, namely one hundred and forty as the initial boiling point and 428 as to the end point, I mean as to the initial boiling point, 140 or lower, that the liquid was gasoline?

A. I didn't get all that.

The Court: Read the question over to him.

(Question read by the reporter.)

A. I don't know whether they got them instructions or not.

The Court: Well, what is your best recollection about it?

A. I had instructions, my instructions would call for it; if they come within the required specifications I would call it gasoline.

Q. Well, are they the required specifications that I enumerated in my question?

A. That might be one of them.

Q. If I didn't state all of them, you state all of them.

A. There are so many of them.

The Court: State all you can remember.

A. There is a South Carolina test—

The Court: Go ahead now.

Mr. Swacker: May I suggest that he takes some one in particular, there are a number of kinds of specifications.

The Court: The test used there.

Mr. Swacker: There are a dozen different kinds.

The Court: I will permit him to ask the test they use there and the test they gave these inspectors.

A. One specification is not more than sixty-one gravity, not lower than 130 end point and 390 dry, and 25 color, not less than 130 over point and 390 dry.

Q. We are trying to get this first specification. I am asking you with reference to the determination and the purpose of the entries on these daily reports of the tests made, as to what determined your entries upon this sheet. I am not talking about your specifications for shipping the stuff out.

Mr. Swacker: I object, he said he did not make these

sheets and did not know what the instructions was to the boys.

The Court: Turn the witness over to me, I think I can get it. Now, why were those entries made on the sheet and the names put there?

A. Put there, I suppose they were put on there on account of the gravity, that is why they called it gasoline.

Q. Why were these records kept?

A. Just to refer to, that is all, daily records, we could look back.

Q. They were permanent records of the Gulf Refining Company? A. Partly.

Q. Were those records made daily? A. Daily.

Q. Well, now if a daily record was made, whose duty after they were made was it to inspect the records?

A. I looked after it in my end, two or three men looked after it.

Q. Were these records in your end of it?

A. No, sir, in the laboratory.

Q. Whose duty was it, after the day's business was closed, or after the period passed, to inspect the records?

A. I think that would go up to the man in charge of the laboratory.

Q. The chief officer of the laboratory? A. Yes, sir.

Q. Now, why would he inspect the records?

A. Maybe asked for a report, asked for inspection, turn in reports, to the main office.

Q. What do you mean by the main office?

A. The general superintendent's office, the manager's office, that is the main office.

The Court: Now, I find on this, it says, "Report of tests made Thursday, April 11, 1918; test number; kind of oil, tank number, still; gravity, flash; vis; what does that mean?"

A. Viscosity.

The Court: Cloud; color;" now where do you see—it says 617 gravity, what does that mean?

A. Well, that is sixty-one and seventy hundredths, that red line there you see.

The Court: Oh, yes. Now, these names were put on at the time of the inspection and the time the specific gravity was determined and the color determined?

A. Yes, sir.

The Court: And then the reports went to the superior officer in the laboratory?

A. Laboratory.

The Court: And when they went through his hands, where did it go to from there?

A. I think it went over to the main office.

The Court: To whom in the main office?

A. The general superintendent, I think he was about the only one who got a copy of that, it was out of my line.

The Court: Go ahead.

*Examination by Mr. Payne.*

Q. Mr. Timmons, as pump house foreman did you have charge of pumping light oils from one tank to another, from a tank to an agitator, from the agitator to the steam still, from the tank cars, from tank cars to tank steamers; did you have charge of all pumping? A. Yes, sir.

Q. I will ask you whether it is a fact that the daily tests are made as to the contents of each tank containing these light oils for the purpose of determining your pumping?

A. Yes, sir.

The Court: What do you mean by determining your pumping? What do you mean by that?

A. Well, where to put the different grades of oil. That is one thing we depended on the gravities and flashes.

The Court: You mean what tank to put it in?

A. Yes, sir.

The Court: You mean you had it inspected before you put it in the tanks?

A. Yes, sir.

*By the Court.*

Q. You had the cars, say the cars were shipped from Kiefer, you had them inspected and then afterwards took the inspection and report on it and then you would determine what tank to pump it into?

A. Yes, sir, part of the time, maybe it was storage and I would throw it in either one of the tanks.

The Court: That is, on storage?

A. One day might put it all in 805 and the next day part in 805 and the next day put it in the other tanks. Just a case of storage on those cars.

The Court: Would you put it in the tanks regardless of the specific gravity, regardless of the color, regardless of the distillation?

A. Regardless of all except the color, I wouldn't want to put the color in those tanks.

The Court: Go ahead.

Q. I want to ask whether you know when the initial boiling point of the tank is 140 or below the end boiling point is 428 and the gravity is 57 of the particular tanks the inspector had general instructions to denominate that oil gasoline?

A. I don't know.

By Mr. Payne: I ask leave to cross examine the witness.

Q. Did you not so state to Mr. Stewart?

A. No, sir, I don't believe I did.

Q. Don't believe you did?

A. Don't think so. I know I am positive I am pretty sure I did not.

Q. Do you know what would determine whether the liquid in a particular tank was gasoline or not?

A. I would know by a full test of it. I would determine by that.

Q. Is it not a fact—is it a fact that after the inspectors at the laboratory had made their tests they advised you what the results of their tests were and you advised them what the liquid was? A. Not generally, no.

Q. Well now how often would that occur?

A. That would happen maybe once in a great while where one would need such specifications to know what was going to be shipped out.

By the Court: Now when they asked you—why would they ask you?

A. Why I might have called them up and told them to give me a distillation, a full test on 805 tank and they would tell me what it was and I would say I am going to use it for southern gas then.

By the Court: You mean by that they would give you the distillation they had already made?

A. Yes, sir, and I said alright I might use that for southern gasoline today, I might use it for New Orleans gasoline today or might use it for Philadelphia gasoline.

By the Court: Go ahead.

Q. Now you had certain oils of various grades in these different tanks, did you not? A. Yes, sir.

Q. You had orders from customers for gasoline and naphtha and other oils calling for certain specifications, is that a fact? A. Yes, sir.

Q. Then was it not necessary for you to determine what



was in these particular tanks in order to get a commodity that would meet those specifications? A. Yes, sir.

Q. So that when you made the tests to determine what was in the particular tanks did you make it in reference to order from your customer or did you make it for the purpose of ascertaining what stock you had on hands?

A. Mostly for what stock I had on hand at the time.

Q. Now in determining what stock you had on hand what were your instructions, how did you arrive at the determination as to whether a particular tank contained gasoline?

A. Well when these distillations were made and they made the distillation tests, I knew what they were. I was governed by the distillation tests.

Q. What were those tests as to which you made the entries concerning a particular tank of gasoline?

A. Well, as I said it before, if a tank was around a 60 or 61 gravity and it was less than—or not more than 130 initial or 390 dry I knew I had a New Orleans gasoline on hand.

Q. You testified these inspectors would get their sample and make their test and would ordinarily make the entries on these sheets. Now is it not a fact that when they were in doubt as to how they would enter a particular oil, for example as to whether it was gasoline or not they would call you up on the phone or confer with you as to how it should be designated on these sheets?

A. There wasn't a general practice of that.

Q. Did that ever occur? A. Sometimes it has.

Q. How often? A. I don't remember.

Q. Once or twice a week? A. No, I don't think so.

Q. Well, did it occur oftener than that?

A. No, might have been a green man coming in there or somebody that wasn't doing that class of work and he might call me up and want to know what was in the tank.

Q. Did these inspectors use their own judgment as to what they would denominate it or did they denominate it this thing or something else on instructions from their superior officer.

By Mr. Swacker: I object, he has already testified.

By the Court: Did they do it on specifications or did they do it on instructions or would they use their own independent judgment or follow specifications or were they to follow specifications in denominating it?

A. I think they used their own judgment the biggest part of the time.

By the Court: Use their own judgment independent of the specifications?

A. On that report.

Q. What?

A. On that report they were going by gravity as I said before, that is what they call gasoline by gravity.

Q. They were going by specifications?

A. You could say specifications.

By the Court: They were going by gravity, and distillation and color specifications, that way to determine it.

A. Well, I don't know, that record there don't show any distillation.

By the Court: But it shows color and gravity?

A. Yes, sir.

By the Court: And from that it would indicate that they were going on color and gravity specifications?

A. Right there it looks like that.

Q. Will you state just what you mean by gravity, just explain for the benefit of those present who might not just understand what it is?

A. That means so many degrees lighter than water when you speak of 60 gravity, it is so many degrees lighter than water.

Q. No- do you universally, generally work the Baume scale on your hydrometer? A. Yes, sir.

Q. Explain how you get the gravity of a particular oil?

A. There is a hydrometer about I should judge fourteen inches long and at the bottom there is a little piece of bulb filled with mercury and a hollow tube running I judge about eight inches long and that is hollow and that tapers down to half the size of a lead pencil and from where it tapers down there is a scale on it running from 59 to 71 and 59 would be a fraction of every degree up to 61. You take this thermometer, an ordinary thermometer, one made out of glass, covered to go into a test tube or gravity jar and the oil is put into a gravity jar and the temperature is taken, first noting the temperature, you put a hydrometer in there—to find the temperature, say for 60 temperature—say the temperature was sixty. Then you put the hydrometer in there and it reads sixty-one, the little mark on the glass instrument there said sixty-one, we know that is sixty-one gravity, although the difference in temperature varies the gravity, the higher the temperature means a lower gravity. The oil expands and will let your tube down in it lower and you figure back to sixty. It is a standard rule adopted throughout the country.

Q. In other words, to get accurate results you must take the gravity always at a certain temperature?

A. The gravity at a certain temperature.

Q. Now suppose the oil was quite a heavy oil like crude oil, about what would the gravity of that be?

A. Well, that all depends. Say the gravity of crude oil we are running would be about thirty-five gravity.

Q. So the lower the gravity the heavier the oil is?

A. Yes, sir.

The Court: Now suppose when you take the color test it shows the color was flawless, would that indicate then that further distillation was not necessary?

A. Yes, sir.

The Court: Now this superior officer that this report was sent to in the laboratory, was he a chemist?

A. Yes, sir.

The Court: Go ahead.

Q. What type of color apparatus did you use for determining the color of light oil?

A. Why, as I told you, this—

Q. The name of the machine?

A. To tell the truth, I don't know, I never paid any attention, I have been there for the last eighteen or nineteen years and I don't know.

Q. Now will you explain to the jury just how you measure color?

A. Well, this tube is divided up into—one tube is divided up into inches and fraction of inches, and a scale on the outside of the tube and when there is twenty inches of oil in this one tube there is a glass reflector underneath and at the top a little magnifying glass and two tubes, one is practically empty and there is a little blue disc that is to give the perfect rays of light, and reflect the light into this disc. It will be the same as purely distilled water, perfectly flawless, what we call water white color. Now we put the gasoline or kerosene or whatever we are taking color of—this machine is only used for gasoline and kerosene—when you put your oil in this tube and if there is a perfect match when the glass is full we have what we call twenty-five plus; that means it is better than the water white oil. If it gets down sixteen or under we look at the scale. Expert chemists will describe sixteen, we call it twenty three and so on down, if she goes to eight then you change the disc and then further on down you get on down to zero oil. It all depends on the grade of oil you are running.

Q. How did you describe the perfect color?

A. When they both match, when they were perfect and the oil was twenty-five oil.

Q. How did you express what the twenty-five oil looked like?

A. Flawless, distilled water.

Q. You mean when looking through it?

A. When looking through it the same as looking through empty space, the same as water.

Q. And you say that that color is twenty five?

A. Yes, sir.

Q. Now suppose it wasn't quite so good, how would the tints run?

A. Well, it wouldn't change much till you get down to twenty. You will hardly detect it. It will take an experienced man to tell.

Q. Down to twenty, including twenty?

A. Different grades of oil have different tints.

Q. So that the colors anywhere between twenty and twenty five are practically indistinguishable to the inexperienced man?

A. Yes, to an inexperienced man.

Q. What would the color be like if it was, say fifteen?

A. It would have a yellow cast to it.

Q. A yellow cast? A. Yes, sir.

Q. Would it be very dark then? A. No.

Q. What would the color of crude oil be, I don't suppose you have any colors that low?

A. You couldn't run them on that machine. The rays of light wouldn't go through it. You can't get rays of light through anything black.

Q. That is only for the light oil? A. Yes, sir.

Q. About what would the color be if the color would be two?

A. That would be pretty dark.

Mr. Swacker: Compared with the lamp shade?

A. Would be worse than that, might be good and dark, just good red amber color. When you get down to two you might just as well call it zero oil. Two don't mean anything, just as bad——

Q. Perfect color is twenty five and shades down and gets darker as it goes down? A. Yes, sir.

Q. Did you ever have oil that was even better than twenty five? A. Yes, sir.

Q. How do you designate that?

A. Twenty five plus.

Q. Does it occur that the color is ever substantially better than twenty five? A. Yes, sir.

Q. Sometimes substantially better? A. Yes, sir.

Q. I notice an entry here "crude naphtha." Just what is. just what processes have been gone through to get crude naphtha?

Mr. Swacker: I object to him testifying about that, he has not shown he knows anything about it.

The Court: If he knows.

A. Crude naphtha is a part of the oil off the crude still, was a crude as far down in my estimation, as far down as the kerosene cut it has a low boiling point.

Mr. Payne: Now we have some laymen here that don't understand that probably. You are speaking refinery language, perhaps we don't understand.

Q. What do you mean, a crude still? A. Yes, sir.

Q. What are crude stills?

A. There is a still for crude oil, crude oil is put into it and started on the way to refining.

Q. Is that the first thing you do, put it in the crude still?

A. Yes, sir.

Q. Now is the purpose in this crude distilling, really to separate the different components in the crude oil?

A. Yes, sir.

Q. As a result of the distillation in the crude stills what are the products *using broad terms*.

A. Well naphtha, kerosene—there are thousands of names you can call it.

Q. Did I understand you to say crude naphtha is the second cut from the crude stills? A. Oh, no.

Q. What did you say? A. First cut.

Q. The first cut? A. Yes, sir.

Q. What do you mean by the first cut?

A. The first that comes over after she is distilled after you put your fire under your still.

Q. Did you cut it off at any time?

A. We have a place we cut it off.

Q. Let me get this straight, is your crude still on the same principle as a whiskey still?

A. I never seen a whiskey still, don't know nothing about it. I suppose it is from what I heard in the court room.

Q. You put your crude oil in the still and then that distills and comes out of the still. A. Yes, sir.

Q. The flow begins? A. Yes, sir.

Q. Now you cut it off here and there, now what do you do with the first cut? A. Well that is—

Q. Is it piped away and put in a tank? A. Yes, sir.

Q. Then what do you do with the second cut, is that piped away to a second tank? A. Yes, sir.

Q. Now taking the crude naphtha, it has been made from crude oil by the distillation process and put into the tank, now what is done in the next process of refining that article?

A. What the first cut?

Q. Yes? A. Well that is put back into the steam still.

Q. What is the purpose of putting it in the steam still?

A. To get the light edge off of that again.

Q. And then after it has gone through the steam still what is done with it next?

A. Why we use it for various purposes, that can be used for a thousand and one purposes, oh, not quite so many as that but quite a number of things, just depends on what we have to make.

Q. Now hold on, what is done with it after it has gone through the steam still, don't you have a treating plant?

A. That is a treating plant.

By Mr. Swacker: He has explained a number of things that may be done with it according to what they intend to make?

Q. Does it go from the steam plant into the treating plant?

A. Out into the continuous treaters.

Q. Then what happens to it next? A. On into the storage tanks.

Q. It is then ready for market? A. No, sir.

Q. What do you do with it after that?

A. It has got to be either blended or further refined as you might say.

Q. Now hold on, don't let's anticipate anything.

By Mr. Swacker: I object to that, he is asking the man and the man is answering him as fairly as he can.

By the Court: Never mind, go ahead.

Q. After it has gone through the processes you have mentioned the crude still, the steam still and the agitator, what further is done with it in the way of refining?

A. Well it might be—just depends on what grade I am running—might be further blended.

Q. Did you do anything else ordinarily? No, sir.

Q. After it has had those three processes? A. No, sir.

Q. What is the purpose of the blending which you might do?

A. To meet the specifications transported from one oil to another tank to meet whatever specifications I am required to ship.

Q. Can those specifications be met by the pumping from one tank to another?

A. Sometimes, sometimes you have to agitate and sometimes blow the tank to get the sample.

Q. You take a sample from it? A. Yes, sir.

Q. Naturally you have to do that, to ascertain the con-



tents of it, but aside from this blending is there anything other that is done to it before you ship it?

A. As it is in the tank?

Q. Yes, sir. A. No, sir.

The Court: Let's make haste. You are taking up lots of time.

Q. I notice an entry, "Painters' naphtha distillate," what is that?

Mr. Swacker: I object to that.

Mr. Payne: I will change that.

Q. What processes are gone through to get painters' naphtha? A. The same processes.

Q. The same processes as the other. That is to say, the oil is refined in the crude stills, steam stills and agitators, and then it is put in a tank and if it meets certain specifications you call it that. What are the specifications that enables you to determine whether it is painters' naphtha?

A. By the gravity and color.

Q. So that your painters' naphtha has been through all of your refining processes?

A. Some of it has.

Q. Some of it has. Well now that is a little bit different from what you testified.

Mr. Swacker: I object to those kind of statements before the jury. He certainly made no such statements at all.

The Court: I will let the jury determine.

Mr. Swacker: I would like an exception. I don't think that is proper examination.

Mr. Diggs: We now ask the Court to instruct the attorney for the Government not to make remarks about the nature of the witness' answers.

The Court: That is not a proper way to examine a witness. The way is to ask him if he didn't say so and so a while ago. That is the proper way to examine a witness. Proceed.

Q. What processes are gone through to get gasoline?

A. To make a good commercial product of crude—

Q. Strike that out.

The Court: I object to you leading that witness. Don't take up so much time, just ask the witness what you want, go ahead.

Q. In the making of gasoline as a finished product, gaso-

line coming through the same three processes as the painters' naphtha. A. Yes, sir.

The Court: Take the witness.

Q. What is the gravity ordinarily of the painters' naphtha, how does it run?

A. That was, I would say, I will give you fifty four gravity, average gravity.

Q. Fifty four?

A. It has been lower and it has been higher.

Q. About that, that is good enough.

Mr. Swacker: Mr. Timmons, how long have you been in—

Mr. Payne: Just a moment now.

The Court: Now, I am not going to wait on you, if you are going to examine this witness you will have to examine him.

Q. What processes are gone through—I will change that. Suppose a tank is naphtha distillate, what processes have been gone through to make that naphtha distillate?

A. It went through the stills.

Q. Which one?

A. Went through the crude stills and possibly through the steam stills.

The Court: Take the witness.

*Cross Examination by Mr. Swacker.*

Q. Mr. Timmons, how long have you been engaged in the oil refining business?

A. Been in—will be nineteen years the second day of October.

Q. How long have you been at that Port Arthur plant of the Gulf Refining Company?

A. I am virtually the oldest man at the plant.

Q. How long has the plant been there?

A. Since the previous June before I got there.

Q. How long ago did you get there?

A. Nineteen years ago the second day of this coming October.

Q. How large a plant is it, a very large refinery or just a small one?

A. An enormous plant.

Q. One of the largest in the country?

A. My understanding, it is the largest independent refinery in the country.

Q. That is, the largest other than the Standard Oil Company? A. Yes, sir.

Q. You spoke repeatedly of specifications, I am not trying to get any particular specifications, but what are these specifications you handled.

A. Well, there is northern gasoline, southern gasoline, motor specifications.

Q. What is motor specifications?

A. That is the specifications adopted by the United States government.

Q. Motor Transport Corps of the United States Army?

A. Yes, sir. Aeroplane gasoline.

Q. What is aeroplane gasoline?

A. That is used for aeroplane.

Q. Is that a specification of the United States Army?

A. Yes, sir.

Q. And what is the next? Fighting gasoline.

A. That is a specification adopted for the bombing planes as I understand by the United States Army, United States Aviation Corps.

Q. What is another specification?

A. A South Carolina Motor gasoline.

Q. What do you mean by South Carolina?

A. That is a specification adopted by the State of South Carolina.

Q. Is it a specification required to be met by the State of South Carolina? A. Yes, sir.

Q. Then is there one which is the Company's own standard as distinguished from the special specifications?

A. Yes, sir.

Q. What is that called?

A. Just called our specifications for gasoline adopted by the officials of the Gulf Refining Company.

Q. Is that not called "Good Gulf Gasoline?" A. Yes, sir.

Q. Are there any specifications by the laws of Texas governing gasoline, to be sold in the State of Texas?

A. I think there is. We met the specifications.

Q. How does the Gulf's specifications compare with the specifications adopted by the United States Army Motor Transport Corps?

A. Why, they are different.

Q. In what respect are they different?

A. Well sir, only ours refers to a over and dry and the army the other government specifications there is a fractional distillation as to being so much of a percentage over at so many degrees.

Q. What do you mean by fractional distillation?

A. That is the same thing I stated when they run it through this Engler flask, 100cc.

Q. Don't use terms as 100cc they don't understand it, tell them what the Engler flask is.

A. Same as a small still, a small still on a small scale, not more than half as big as that glass and that comes up in a small pipe and goes into tubes and at the top it is open and insert a cork with a thermometer in it and what we call a condensing tube leads off into a glass tube and that passes through a condenser and the fire is under and we put a small amount of oil in it and we watch and when the oil starts to boil you can readily see it when the oil starts to boil in it the same as water and it passes on through and condenses and you catch the first drop and you catch then the initial boiling point and that is what they term in this country the initial boiling point.

Q. Is that the same thing you call over point?

A. I call it overpoint. My readings.

Q. Well you watch your readings, government's specifications of it?

A. The specifications says if I remember rightly that at 221 degrees that the thermometer shows 221 degrees not less than 20 per cent distilled, must be twenty per cent of it that has been put in this little distill, must be distilled back into the receiving flask, this receiving flask is marked off and must not be less than 20 per cent. At 275 not less than 45 per cent must be distilled.

Q. That is when the thermometer is 275?

A. When this thermometer reads 275 not less than 45 per cent must distill. At 356 temperature not less than 90 must be received in this flask and that is three points we must meet. We must have not less than 20 per cent at 221, 45 per cent 275 and 90 per cent at 356.

Q. Now, is there some point at which it needs to have started?

A. Not less than one hundred forty. It might be over one hundred and forty. If it goes past one hundred forty it don't meet the government specifications; got to be over one hundred forty temperature and after this whole body has been distilled, as you see it all goes to vapor, that is your dry point, what you call end point. That means not to exceed more than 428 degrees Fahrenheit temperature. And all this is distilled over here must recover ninety five per cent. You must recover ninety five per cent of the amount you put in here, else it wouldn't meet the government specifications.

Q. Just what do you mean by recovery?

A. That is the amount distilled, the amount of oil you put in, one hundred c. c. in this case, we must recover ninety five cc. They give us a loss of five per cent.

Q. That is at the end of the process of distillation, there must be left ninety five per cent of the material you started with?

A. Yes, sir.

Q. And if it does not recover up to ninety five per cent it does not meet the specifications?

A. Yes, sir.

Q. Is there some further specifications in regard to color, we are dealing with the United States specifications.

A. Good water white color.

Q. What is that, twenty five? A. Twenty five.

Q. On this color machine you described a while ago?

A. Yes, sir.

Q. What is the name of that machine, Saybolt Colorometer?

A. I never did look at the name; I am ashamed to admit it, but I always called it the color machine.

Q. You dealt with the army specifications?

A. Yes, sir.

Q. Are these other specifications exactly the same as the army specifications, or are they different?

A. They are different.

Q. The various state laws sometimes control them?

A. Yes, sir.

Q. And sometimes it is the purchaser's own specifications? A. Yes, sir.

Q. Is anything regarded as finished gasoline unless it meets some specifications of that character?

A. No, sir, everything shipped must meet the required specifications.

Q. If no other specifications, then the company's own specifications is good Gulf gasoline?

A. Yes, sir.

Q. And gasoline is not in fact sold or regarded as gasoline except that it meets those specifications?

A. Yes, sir, that is right.

Q. And it is not regarded as gasoline until it meets those specifications. A. No, sir.

Q. Suppose you start to meet certain specifications, say the army specifications, and you are about ready to ship, what is the first thing you do, do you take the distillation test of the tank,—to see if you meet it?

A. A sample of the tank has been taken to see if it meets the army specifications.

Q. Suppose it has not met it?

A. Further blending has to be taken place, further blending would have to be gone through to meet the required specifications.

Q. Explain to the jury what the blending consists of doing with the oil, consists in doing with the oil?

A. The putting of one oil into the other and blending the tanks and getting a sample and running the distillation, that would be blending it, would be putting those two things together and mixing it.

Q. Well, are they mixed with some degree of care and design? A. Yes, sir.

Q. Or method? A. Yes, sir.

Q. Or just mixed recklessly?

A. No, sir, got to know where you are at.

Q. How do you know where you are at to mix it?

A. By having a distillation taken of the products I am going to mix.

Q. You explained to Mr. Payne a while ago that you have a distillation test taken of each of these tanks every morning?

A. Yes, sir, that is the reason for it.

Q. That is the reason of taking that distillation test to know the quality of material in each tank? A. Yes, sir.

Q. Now those tanks will contain, will they, material brought from the stills, from distilled crude oil?

A. Yes, sir.

Q. And you will have the specifications of each of those taken, whether it comes from Oklahoma, the unrefined naphtha, or whether it was gasoline in process of completion, made there at Port Arthur? A. Yes, sir.

Q. What do you do with these specifications that you have taken when you are going to determine on a blend?

A. I see what the tanks specify, I see that one tank I am going to make, that is going to be too heavy, and I have got to overcome the dry point. Well, I have got to put something in there that will overcome this heavier dry point. Maybe the next day, maybe before the same day is out, the overpoint might be too low, as I call it, distilling way down too low, or distilling too high. Whatever specification I am loading out, whatever orders I am filling, I have got to be governed according to these tanks and mix them accordingly.

Q. Now have you a distillation test of the unrefined naphtha as well? A. Yes, sir.

Q. Is that made on every car, or just made occasionally on an average?

A. In the earlier days we made it on averages, and then we later on, about twice a week, but now we are doing it daily.

Q. Now, do you ordinarily run those distillation tests—

The Court: Just a moment. The Court will be at ease a moment, the jury may be excused for 5 minutes.

Q. You were explaining to the jury how you would blend



this unrefined naphtha when you were preparing to meet some specifications, you said you had a test of the tank of the material with which you were going to blend unrefined naphtha and you also had a test of the unrefined naphtha? A. Yes, sir.

Q. Now were those tests of unrefined naphtha complete distillation tests? A. Yes, sir.

Q. Run all the way to recovery? A. Yes, sir.

Q. And as a matter of your experience over a period of time over which this material has been coming state what height of recovery you have ever known this unrefined naphtha to produce?

A. About 88 the highest and it has been as low as 76 and 80.

Q. In this question of specifications how important is a matter of recovery?

A. It is important enough, real important.

Q. Is it the most important element of the gasoline?

A. Yes, sir.

Q. Of the finished gasoline? A. Yes, sir.

Q. Why is it so?

A. If it is not there, it shows that there too light an oil mixed and come off in gas, or has been used, or has not derived its energy, evaporation, shows the evaporation, not only being used but sometimes in tanks, that is lost in evaporation the lighter quality is gone.

Q. It shows that the purchaser is not going to get any thing like a hundred per cent recovery? A. Yes, sir.

Q. In the sense of mileage of automobiles or while in storage loss due to evaporation? A. Yes, sir.

Q. And so it is a vitally important element to the user or purchaser of gasoline that it will meet the recovery specifications? A. Yes, sir.

Q. And you say the company's own standard is 95?

A. Yes, sir.

Q. And the United States Government standard is 95?

A. Yes, sir.

Q. Do you have any specifications that run below 95?

A. I have never heard of them, I don't remember ever seeing any.

Q. You have never known unrefined naphtha to run above 88? A. To the best of my knowledge it never has.

Q. In the state in which it arrives from Oklahoma, it would be seven per cent short of the recovery universally required in all finished gasoline produced in that plant?

By Mr. Gann: If your honor pleases—

By the Court: I think that is going a little too far

in that character of questions. It is a compound conclusion propounded and framed in the question.

By Mr. Swacker: I will make it more simple.

Q. You say all the unrefined naphtha all the unrefined naphtha you have ever known to come there from Oklahoma was at least seven per cent short in the recovery specifications which are the specifications used by the company.

By Mr. Chambers: If the Court please, pardon me. I don't think this witness should be led by an attorney.

By the Court: I don't think that is proper.

By Mr. Chambers: He is leading the witness all the way through.

By Mr. Swacker: He was examined on direct in that fashion and we made no objections.

By the Court: You have asked him this question as what is the highest as to the naphtha from Oklahoma; he says 88 you have got the other. This other is a conclusion, a matter to be presented to the jury.

By Mr. Swacker: I believe the criticism is good.

Q. Now then do you frequently run unrefined naphtha to a complete distillation test or do you merely get the over and dry points?

A. Well get the over and dry points and the full distillation anyway two or three times a week.

Q. Now then what is your next step in blending, having ascertained the distillation tests of the gasoline, in the tank produced at the refinery that you are going to blend with the unrefined naphtha and having the distillation tests of the unrefined naphtha what is your next test?

A. Well I see how much oil is in the tank.

Q. How much oil is in the tank, which tank?

A. In the tank I am going to mix it. How much oil in that tank.

Q. How much of the refinery made oil?

A. The refinery made oil and the mixture, how much in that tank. I have got to know that to work my proportions what I am going to place in them and then I figure it out and start transferring.

Q. What do you mean, start to transfer?

A. Transfer out of the tank, I am going to mix in it, transfer that tank into the other.

Q. What do you mean by figuring out?

A. How much I am going to put in that tank.

Q. How much unrefined oil you will be able to put in the tank of the refined oil?

A. Yes, sir, I am just figuring roughly, I don't know.

Q. Does anybody know absolutely?

A. No, sir, there might be one man, I doubt if a man could hardly figure it out.

Q. Well you are down there with all these chemists and laboratory people did anybody figure out to your knowledge mathematically, exactly how much would be necessary to blend perfectly to come to a distillation test?

A. No, sir, not to my knowledge.

Q. What is it a matter of judgment rather than computation?

A. It is a matter of distillation. After the whole thing is done it has got to be retested to see where you fall off.

Q. Could anybody do it or test it without experience and judgment?

A. Well I have been at it six years and I don't say I am perfect yet. I would say it would take a man of considerable experience to do it.

Q. Do you always get it according to specifications?

A. I should say not.

Q. What is generally the case?

A. It is mostly incorrect, it has got to be done the second time.

Q. What is that correcting it? A. Correcting it.

Q. What do you mean by correcting it?

A. Trying to meet the specifications.

Q. And in what respect do you correct it?

A. Either correct the overpoint or the recovery of these fractional distillation in between.

Q. That is the distillation test made as soon as you have completed your tentative blend—if it doesn't meet specifications you notice or observe wherein it doesn't meet it?

A. Where it doesn't meet it and remedy it to that.

Q. And meet it at the overpoint? A. Yes, sir.

Q. Or at the fractional point? A. Yes, sir.

Q. Or it may meet at the recovery? A. Yes, sir.

Q. Or at the fractional point in between? A. Yes, sir.

Q. How would you proceed to correct it?

A. Go through the same practice again, figure it out again and put in whatever is needed.

Q. Now what is the practice with respect to the refinery gasoline that you use for this purpose of blending, is it more than specifications or less?

A. Must do better than the specifications.

Q. That is, the refinery gasoline which you are going to use to blend with the unrefined naphtha, is better than the specifications?

A. Yes, sir, we have to have something better to blend it; how am I going to overcome this recovery of the unrefined naphtha if I didn't have something better than ninety-five per cent recovery?

Q. In other words, it would be impossible to bring something to ninety-five unless you use a product that was over ninety-five per cent recovery to put with it? A. Yes, sir.

Q. You blend the so-called unrefined naphtha with super-refined gasoline? A. Yes, sir.

Q. You might bring it down to the recovery point but you might destroy—

Mr. Payne: Just a moment, I haven't heard that word 'super-refined' before, the witness hasn't testified that there was any.

The Court: I think that is improper.

Mr. Swacker: He said refined specifications.

The Court: Did you use that word before?

A. I don't think I ever used the word; you could call it super-refined.

The Court: I will strike that out.

Mr. Swacker: Well, the witness has testified that this exceeds the specifications.

A. Yes, sir.

Q. Now, will you describe that, use some word if you can to describe it as the character of refined, over-refined or what—

The Court: No, we are not going to appoint any new conditions here in this court at this time.

Q. What is it commonly considered?

The Court: That would be the specifications designated specifications designated for the gasoline that is intended to be refined, that is all that means.

Mr. Swacker: Yes, sir.

The Court: That looks to me like the question now is, I don't know what you are driving at—is it your contention now that no naphtha is refined until it is brought to the process of gasoline that they are going to ship to the market?

Mr. Swacker: No, sir.

The Court: What is your contention?

Mr. Swacker: Our contention is this, that this product is not gasoline until it is a finished product and that—

The Court: When is it a finished product?

Mr. Swacker: After this blending or correcting, until it gets down to meet the specifications.

The Court: You are bringing in other purposes then, although it might be such a product as could be used in some commercial market as gasoline, that until it is blended in this refinery to meet the specifications of the kind of gasoline they put on the market it would not be gasoline—is that what you mean?

Mr. Swacker: Yes, sir, we say it is not gasoline, and in the proper name of the finished product, but we are not going to have this witness testify as to the possible use of that material, but we will show it is not gasoline by any of the accepted standards, we will show by expert witnesses is what the accepted standard is, what they term to be gasoline or otherwise.

The Court: Go ahead.

Q. Now, you say the gasoline produced in the refinery, that you are going to use for blending, is in excess of the specifications? A. Yes, sir.

Q. And you judge how much of the unrefined naphtha you can blend with the quantity you may have available of the gasoline made, and that will only bring it to the specifications, bring it down to the specifications?

A. Yes, sir.

Q. Now, you say that the unrefined naphtha received no treatment, what do you mean by treatment, is that a technical word in connection with refining?

A. Treatment in any sense of the word means when it goes through a chemical act, and chemicals pass through it.

Q. That is a term as used in refining. A. Yes, sir.

Q. And you used it in that respect? A. Yes, sir.

Q. And that is an incident of the refining but not a necessary one? A. Yes, sir.

Mr. Gann: Let me understand it, you say it was or was not treated?

Mr. Swacker: He says it was not except in some instances, but generally it was not.

Q. Now, you also said in answer to a question of Mr. Payne, that you did nothing more but to blend the material, that is by blending it you include the re-blending and correcting which you spoke of?

A. Of course—

Q. That is, as to the cars which are blended and distinguished from those that go in the stills? A. Yes, sir.

Q. Now, these laboratory boys that have been spoken of here or testers, they are not inspectors, you have other employees that you call inspectors? A. Yes, sir.

Q. Now, what are the inspectors?

A. The inspectors of ones loading boats, they are there to see the boats are in proper condition to receive the order.

Q. And what else do they do in relation to it?

A. They pass upon the quality of the oil, whether it is fit for loading or not.

Q. And do they pass on it again after it is loaded?

A. Yes, they watch the process all the way through.

Q. How do they pass on it?

A. Well, the color and gravity and the flash and the viscosity all the way through.

Q. How do they ascertain those things, by samples and tests? A. Yes, sir.

Q. Now, in answering Mr. Payne's questions about inspectors you were assuming that he was referring to these laboratory testers? A. Yes, sir.

Q. And the answers were intended to refer to laboratory testers?

A. That is the name they ought to be called.

Q. Have they anything to do with the classifying of any material as gasoline or anything else? A. No, sir.

Q. All their office is simply to perform the mechanical function of testing it and putting down the tests? A. Yes, sir.

Q. And they merely use any name they use as a matter of convenience? A. That is what I would judge.

By Mr. Payne: I object.

By the Court: I think that is a very improper way to examine this witness. He is your employee. And I will call the jury and I charge the jury to the manner in which the witnesses are examined. I am going to see this testimony goes fairly before this jury.

By Mr. Swacker: That is all I want, your honor.

By the Court: The way to get this evidence out is to get it so there *were* be no reflection against its weight.

By Mr. Swacker: I want to get from this witness what the exact function of those testers is.

By the Court: You can ask him that, not suggest the answer in the question you ask. Go ahead.

Q. Do these testers have anything to do with the determining what anything they test is? A. No, sir.

Q. As a matter of a name of it? A. No, sir.

Q. What do they use any name they use, why do they use it?



A. It is commonly called around the plant.

Q. What is the practice as to what any unfinished material around the plant may be called?

A. Called distillate, in any sense of the word after it passes through the stills, it is distillate form.

Q. And as far as they are attached to any particular name or a kind of oil do those names follow the class of material?

A. Now, what do you mean by following the class of material? Well, now, it is in a kerosene tank that would be sunburst steam still stock or lustre stock still or one hundred Elliott steam still stock after it passes through the steam still and when it has made certain distillates it is called light—

Q. What do they call the material that is going to be made gasoline?

A. They will call that gasoline distillate. They call it gasoline distillate when it comes off of the still.

Q. After you have treated it they call it what?

A. Call it gasoline.

Q. Before you have made specifications?

A. They will call it that.

Q. And what will be the common practice around the plant?

A. They will call it that, that will be known—by gravity, possibly.

Q. Now, you said in answer to a question you would put this unrefined naphtha into a tank regardless of distillation, just what did you mean by that?

A. Well, I meant by that, even if I knew at the time this unrefined naphtha does not meet government specifications, would put it into a tank, we got the stuff to pop out, that is, put in a tank for storage and then it is transferred from that tank to wherever needed. I might put more stuff in this unrefined naphtha right then. Might be room in the tank to take care of it. Put in there principally for storage. But we haven't had equipment enough to keep it separate.

Q. Is there any instance of pumping in the shape of mixing that takes place in the tank? A. I don't get you.

Q. You spoke of air awhile ago, what is the explanation of that?

A. That is to agitate the tank for this mixing. You take a grade of oil, suppose I had 10,000 barrels of a light gravity gasoline that was in the tank and that was composed chiefly of unrefined naphtha and I would pump in a heavier grade of naphtha. That heavier grade of gasoline distillate, this heavier oil has a tendency to lay on the bottom of the tank it won't mix thoroughly with the oil, now to get this mixed air is blown in.

Q. Blown?

A. Air turned on compression the oil is thoroughly agitated and that mixes all grades evenly, the heavy and the light together, which gives a uniform gravity whereby you can readily get the distillation more accurately.

Q. What is your practice as to what this unrefined naphtha is called around the plant?

A. It is called everything.

Q. Give some of the names it is called.

A. Well, I have heard it called Kiefer gas.

Q. Kiefer gas?

A. Yes, sir, chain lightning, over the top, hold it in her, Gilbert; TNT; oh, so many names, just whatever happens to be in a man's mind, whatever comes to mind; one man might call it one thing and another call it another, and yet the head of the departments know what he is talking about.

Q. Now you said in answer to a question by Mr. Payne, a green inspector might ask you sometimes what name to apply to a sample he had used, was he asking you that as a matter of information or as a matter of instruction?

A. I think more as a matter of information, likely.

The Court: Proceed with the witness.

Q. Now, you said a while ago that this Sayboldt Colorometer or this color machine was used only for gasoline and kerosene; did you mean to embrace naphtha?

A. All grades down to below a kerosene cut in any stage of the game, either refined or treated, any grade at all.

Q. What is the next process of refining; you have named a number of processes to Mr. Payne, of refining gasoline in the refinery, you spoke of the first cut off as a crude naphtha, being naphtha distillate, going through continuous treaters; go on with it to finished gasoline.

A. The last stage would be this last process, this blending.

Q. Then after that wouldn't there be an inspection?

A. There would be an inspection, you could call that a process. I consider anything done in the way of finding out or improving a product for market is refining; that is the way I consider it.

Q. You said painters naphtha had been through all processes of refining; by that are you referring to all processes to make it painters naphtha, or all these other processes?

A. Necessary to make it painters naphtha.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Are there also those processes to make it gasoline?

A. Yes, sir, certain processes to make gasoline.

Q. How long did you say you had been in the refining there?

The Court: He said nineteen years.

Q. When did you first hear of unrefined naphtha?

A. I heard first of unrefined naphtha—

The Court: The first time the term was used or called to your attention since you have been there?

A. The first shipment ever came in there, it was unrefined naphtha to me.

Mr. Payne: I insist on the witness answering the question.

A. I considered it was unrefined naphtha when the first shipment came in there.

The Court: When was the first time you heard the term used "unrefined naphtha" or you used in since you have been there with this defendant company during the nineteen years?

A. I used it in my own end of it ever since it first began coming in.

The Court: When did it first begin coming in?

A. 1913, something like it, 1914.

Q. How long have you been receiving at Port Arthur the product shipped to you by the Gypsy Oil Company, Gasoline Department, from Kiefer, Oklahoma?

A. I think since 1913 or 1914.

Q. Has the custom with reference to the unloading and testing as to which tank it would go to, as you testified to here yesterday, has that been the custom from the beginning?

A. Yes, sir.

The Court: I am not going to let you repeat, we are going to get through with this witness sometime.

Mr. Payne: I just wanted to bring that out.

Q. What was the term that the employees generally used in referring to this stuff from Kiefer?

A. I always called it unrefined naphtha, unfinished naphtha, in truth.

Q. Answer my question, please.

Q. I don't know what they called it, but by the book shows, they called it everything.

Q. What does the book show they called it?

A. They called it Kiefer gas.

Q. Was it not Kiefer gasoline? A. I don't know.

Q. Well, now—

By Mr. Swacker: I object now the books are the best evidence.

By the Court: Yes, if you want to call his attention to it.

Q. If he knows. Now when did you change—up until a certain time—a certain date—did you describe—how did you describe that stuff—how was the stuff described from Kiefer in your records?

By Mr. Swacker: I object to this.

Q. In his own records?

A. I called it unfinished naphtha.

By the Court: If the entries were made by him I will let you show them if you have. Let's get through with this witness it will take you all six months to try this case if left to your own inclination. Now when they get through just know what you are going to do and do this thing like clock work. You spoke of refinery gasoline and you describe it—

Q. You spoke of refinery gasoline and you described *the* three processes it went through for refining? A. Yes, sir.

Q. Now is it a fact your refinery gasoline was blended after the refining processes were gone through?

A. The refinery gasoline is blended after.

Q. After the three refining processes are gone through?

A. Well, we blend it, we had it blended.

By the Court: He testified to that, he testified it was put through the processes and then afterwards it was put in the tanks in order to bring it up to 95 test and that he blended it then.

By Mr. Payne: I just wante- to bring out—

By the Court: I am not going to have this kind of business. You are going to get through with this case. This jury ain't a lot of fools.

Q. You spoke of stuff from Kiefer being called—T. N. T. what was that? A. Just a nick name.

By the Court: What do you mean by T. N. T.? Now that is a matter they brought out and very proper to cross examine on.

A. Somebody more than likely reading about this high explosive during the war calls it T. N. T.

Q. That is the stuff that is billed as unrefined naphtha?

A. Yes, sir.

By Mr. Payne: That is all.

(Witness dismissed)

By Mr. Gann: Your honor, please may the jury be excused while we get these documents.

By the Court: No, let's get some witnesses in here, call your next witness.

Whereupon, ARTHUR A. TOPPING, a witness called for and [] behalf of the Government, was recalled and testified as follows:

*Direct Examination of Arthur A. Topping by Mr. Payne.*

Q. State your name. A. Arthur A. Topping.

Q. Are [] the same Mr. Topping on the stand yesterday?

A. I am, sir.

Q. You were testifying as to what the tariff extracts show as to the rates, counsel admit I understand the rates that were in effect on gasoline——

By the Court: I will hear their objections now about these rate sheets, let's get that in the record.

By Mr. Swacker: Let me have that.

By the Court: I am willing for you to have an exception but I want to know what I am passing on.

By Mr. Swacker: On each of the certificates made by the Secretary of the Commerce Commission it reads in substance as follows: I, George B. McGinty, secretary of the Interstate Commerce Commission, do hereby certify that the papers hereto attached consisting of one hundred typewritten sheets contain true and correct extracts from the schedules therein more particularly described and——up to that point we have no objection but from there on we object.

By the Court: Read that to what you object.

By Mr. Swacker: "Said schedules having been filed with the Interstate Commerce Commission on the date specified in said papers and said extracts therefrom having been in force on the date and throughout the period indicated in said papers——

By Mr. Swacker: I am reading from exhibit No. 20 and each of the exhibits for identification they are substantially of the same——

By the Court: Now what is it you object to?

By Mr. Swacker: Object to that.

By the Court: Object to what.

By Mr. Swacker: We object to that portion of the

certificate which attempts to state when the schedules were filed and when they were in force and effect. We say that is a matter of law for the court to pass on and that the commission is not authorized to make any such certificate.

By the Court: I will let it be filed for the consideration for the court. It is a matter of advice for him but not a matter for the jury.

By Mr. Swacker: Now as to the individual figures of the certificate, each page shows not merely excerpts, as to which we are not raising an objection, from the tariffs but also contains a statement at the head of it. I am reading now from the first page of the bundle marked Government's exhibit 20. "Extract from F. A. Leland Agent, Southwestern Lines, Tariff No. 26-R, I. C. C. No. 889, said schedules having been filed on January 10, 1912, and the said extracts therefrom having been in force throughout the period from January 1, 1913, to July 31, 1913, both dates inclusive." Now we say that is merely a statement of the commission not authorized by law and it is irrelevant.

The Court: After you prove a rate filed and in force, the presumption is that it remained there until it is changed. I think that would be the law.

Mr. Swacker: That statement appears on each—we don't concede that that is the law.

The Court: You do not?

Mr. Swacker: No, sir.

The Court: If you have any authority on that I would be glad to see it.

Mr. Swacker: And each page of the exhibit which begins a new purported excerpt from a tariff, contains a similar statement. That is true of each of these exhibits. We desire to object to them on the ground of being incompetent, irrelevant and immaterial, not authorized by the statute authorizing the commission to make excerpts from tariffs. That objection is addressed to each of the exhibits 16 to 20 inclusive. And we have the further objection to make with respect to the excerpts themselves, or as to a part of them, that they contain other matters than gasoline and naphtha.

Mr. Payne: May it please the Court, if I might be allowed to interrupt, we have the original tariffs here that are filed with the Interstate Commerce Commission



and if they object to these, it is all right, we can have the witness testify from the tariffs themselves.

The Court: All right, let him testify from the tariffs and when the tariffs were filed. If he knows after an examination of the record, whether any other tariffs have been filed superseding that tariff, and he is an employee and knows and may testify to that.

Mr. Swacker: May we get the record straight?

The Court: I will sustain your objection as to all matters except what you admit, and they can prove the other by him. Proceed.

Mr. Payne: I don't know whether the witness is prepared,——

The Court: If he is not prepared, let him stand aside.

Mr. Payne: There is some parts——

The Court: No, not some parts, but let him stand aside and be ready and then come back. Have you another witness handy?

Mr. Payne: Yes, sir.

The Court: And during the noon hour you can know what you want and let him have the data and when the tariff was filed and promulgated and if you know whether or not it is still in force and effect, and all these things, and you will have them ready and not be like searching for a needle in a haystack.

Mr. Payne: Now I could ask him about some of the rates.

The Court: You don't make any point on the rates.

Mr. Payne: I mean the other rates, I have had him examine those and I can ask him about those rates.

The Court: Go ahead.

Q. Is the rate there in effect on——

The Court: Show that he has the original tariff before him and let's lay the predicate so they will not be objecting and killing a lot of time.

Q. Have you examined,——

The Court: Have you got the original tariff sheet before you?

Q. That is it—have you got the original tariff sheet as filed with the Interstate Commerce Commission before you?

A. No, sir.

Q. I understood you have?

A. There is a trunk full of them there, Mr. Payne. I brought every one of the tariffs with me, they are in my trunk. It will take about two minutes to get them in here.

The Court: Well, you had better let him stand aside, if they insist on it, and they are going to insist on that.

Mr. Payne: All right, the witness is excused for the time being.

(Witness excused.)

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Whereupon GEORGE ANDERSON, produced, sworn and examined as a witness on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Anderson.

A. George Anderson.

Q. Where do you live, Mr. Anderson?

A. I live at Broken Arrow.

Q. What is your occupation?

A. I am constructing gasoline plants and operating them.

Q. Whom are you employed by?

A. By the Kadeshan, Totem and Shade Gasoline Company.

Q. What position do you occupy with the Totem—state first, what do you mean by the Totem, the Totem what?

A. Totem Gasoline Company.

Q. State your position with the Totem Gasoline Company?

A. I am general superintendent over the four plants.

Q. Where are the four plants located?

A. The Totem is at Jenks, the Kadeshan and Shade at Stone Bluff, and Kadeshan No. 2 is at Broken Arrow.

Q. Now referring to the plant at Jenks, state what kind of a plant it is and what you produce.

Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial. The Gulf Refining Company—

The Court: What is the purpose of this offer?

Mr. Payne: Your Honor, certain counts allege discrimination against the Totem Gasoline Company in that—I will state it if you want me to.

The Court: Yes.

Mr. Payne: In that they shipped casinghead gasoline and billed it on the railroad as casinghead gasoline

or gasoline, and they paid the gasoline rate, and we will show that their product is precisely the same product.

The Court: Very well, get your objection.

Mr. Diggs: We object as being incompetent, irrelevant and immaterial, not within the issues of this case, and not being shown that the Gulf Refining Company is connected with or interested in any of the plants with which the witness has said that he is connected, and that their practice and method of shipment would be hearsay as far as the defendant in this case is concerned.

The Court: I will allow your exception.

Mr. Diggs: Exception.

Q. What kind of a plant is it, Mr. Anderson?

A. It is a compression,—

Q. Compression what? A. Gasoline plant.

Q. Compression Gasoline plant? A. Yes, sir.

The Court: You want to confine this to the period named in the indictment.

Q. During the period from January 1, 1918, to June 1, 1918, did the Totem Gasoline Company of Jenks produce casinghead gasoline?

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not within any of the issues raised in this case, and the defendant is not shown to be connected with any such plant.

The Court: The objection is overruled.

Mr. Diggs: The defendant excepts.

A. (No response.)

Q. State briefly the process by which you produce casinghead gasoline, very briefly?

Mr. Diggs: We object—hold on.

The Court: Have your objection on the same ground, the objection is overruled and exception noted.

Mr. Diggs: In order to preserve the record, and under some of the rulings we have to state what our objections are. To state we have them on the same ground does not amount to anything.

The Court: On the same ground as stated above, just say the same objection made on the same ground as above, and the same ruling and exceptions allowed.

Q. I asked you how you produced—

By Mr. Diggs: The defendant in this case states his

objection in that manner owing to the direction of the Court.

By the Court: That will be allowed as if set out word for word as above. Go ahead, let's get through.

Q. Answer the question, Mr. Anderson?

A. Produce the gasoline by the regular system of compression plants.

Q. That is go ahead, tell how you get the gas out of the well and what is done with it?

A. It is pumped to the plant by vacuum pumps.

By Mr. Diggs: To which we object on the same grounds stated above.

By the Court: Same grounds set out specifically as above and the objection is overruled and exception saved.

Q. Go ahead Mr. Anderson?

A. And is discharged from the vacuum pump to the compressors which run from a low stage to 40 or 50 pound pressure, whatever your load is and then goes to the high stage which is compressed from 375 to 400 and then put into the coils and condensed and the accumulation of that condensation is what makes the raw gasoline.

Q. Now after the raw gasoline is produced do you blend it with any product? A. Yes, sir.

By Mr. Diggs: To which we object—

By the Court: Objection on the same ground overruled and exception saved.

Q. What do you blend it with?

By Mr. Diggs: Same objection and exception as above by direction of the Court.

By the Court: Overruled, exception saved.

A. Blended usually with naphtha.

Q. Do you weather it after you blend it?

A. If the vapor tension is too high to ship.

Q. Well now what do you mean by vapor tension?

By Mr. Diggs: To which we object as being incompetent and immaterial, not relating to the issues in this case.

By the Court: Overruled, exception saved.

A. The vapor tension is the pressure that gathers on the tank after it is confined from agitation or raising of the temperature.

Q. Why do you weather it, in order to lower that vapor tension?

By Mr. Diggs: To which we object as incompetent,

irrelevant, and immaterial, the witness not being shown to act under direction or in concert with the defendant in this case. The manner in which he operates this plant being hearsay and immaterial to this case.

By the Court: Objection overruled, exception allowed.

Q. I want to bring out for what purpose you lower the vapor tension?

A. To make it safe in shipping.

Q. What are your shipping rules in reference to the vapor tension if you know?

By Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not the best of evidence; hearsay as far as this defendant is concerned.

By the Court: Well I will sustain it on the ground it is not the best evidence.

By the Court: I presume these shipping rules are prescribed by the Bureau of Mines.

By Mr. Gann: By the Interstate Commerce Commission.

By the Court: Well the Interstate Commerce Commission.

Q. How did you describe this product for shipment?

By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and hearsay as far as the defendant is concerned and not the best evidence.

By the Court: I will permit to state how it is billed out. I will permit you to introduce the shipping orders.

By Mr. Payne: I have sent for them, they will be here in a few minutes.

By the Court: Alright, it is now 12 o'clock, gentlemen of the jury you will be permitted to separate during the noon hour under the usual instructions, let everybody keep their seats until the jury goes out and you may now go until 1:45.

(Whereupon Court took a recess until one forty-five o'clock p. m.)

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#### AFTERNOON SESSION.

April 14, 1920.

Whereupon, Court having convened at 1:45 P. M., pursuant to adjournment, and the jury having been called

and all found to be present, and counsel on both sides announcing to the Court they were ready to proceed with this cause, the following proceedings were had, to-wit:

Whereupon Mr. GEORGE ANDERSON was re-called for further direct examination by the Government:

*Further Direct Examination of Mr. George Anderson, by Mr. Payne.*

Mr. Payne: Mr. Reporter, mark these two papers Government's Exhibits 22 and 23.

(Said papers were so marked by the Reporter.)

Q. Mr. Anderson, I show you two papers marked Government's Exhibits 22 and 23—pardon me, Mr. Diggs—and I will ask you to state what they are. I will show them to you in just a moment.

The Court: Answer the question.

A. They are forms of bills of lading we use in billing out our product from our gasoline plant.

The Court: Is that a bill of lading used by them?

A. Yes, sir.

Q. Are those bills of lading in your handwriting, Mr. Anderson? A. Yes, sir.

Mr. Payne: I offer these in evidence—I beg your pardon.

Q. State if those shipments were shipments from the points shown on those bills of lading, and state to whom the shipments were consigned and who they were consigned to.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial and not the best evidence.

The Court: Not the best evidence, why?

Mr. Diggs: To ask him what they state.

The Court: Here is the way it looks to me—the way to get that in.

The Court: What do you want to do now?

Mr. Payne: I offer these in evidence. Strike that out.

Q. State if you shipped the cars referred to in these bills of lading?

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, and calls for a conclusion of the witness.



Q. Do you know what was loaded in those cars?

A. Yes, sir.

The Court: Now I will let you prove and describe what was in them, the kind of commodity it was.

Q. Mr. Anderson, describe what was in the cars.

A. It was blended gasoline.

Mr. Diggs: Hold on—to which we object as incompetent, irrelevant and immaterial, hearsay, and this witness has no authority to constitute evidence against this defendant.

The Court: I will instruct the jury that this evidence will not be considered as any evidence proving as to the name of this material. It will only be introduced for the purpose of showing these shipments, so that if afterwards you find from the evidence submitted to you that what was shipped was not in fact under the rules of law was not in fact unrefined naphtha but was gasoline, that then that lays a predicate on the question of discrimination, but it is not to be considered as any evidence on the issue as to whether or not the commodity that was shipped under these indictments was gasoline.

By Mr. Chambers: I want to offer this suggestion: there are certain methods prescribed by the authorities as the name under which the commodity shall be expressed in the tariff and as to the name under which certain commodities shall be shipped. The rule as I understand as laid down by the United States Supreme Court is that it is the Commercial Designation of the commodity itself as the test rule by which you determine.

By the Court: This don't prove anything except to lay these predicates. You have these witnesses here. This recital in here that this is gasoline is not evidence that the other was gasoline.

By Mr. Chambers: I was just presenting the rule that I understand the Court laid down.

By the Court: If you have any authorities I will be glad to look at them.

By Mr. Chambers: Yes, sir, I have them.

By the Court: Go on with this witness and let's get through.

By Mr. Diggs: Note my exceptions to the ruling of the Court.

By the Court: Describe what that commodity was described in the bill of lading. What it is, where it came from

and what it was from and then I will let you go further, probably. You know how to answer that.

By Mr. Diggs: Was that a question to the witness.

By the Court: You have your exceptions.

By Mr. Diggs: Not to that question.

By the Court: You may have your exceptions to it on the same grounds named in the other.

A. It was gasoline blended with naphtha of 72 gravity, 72 to 71 gravity.

By the Court: What was it made from, that is the question.

A. It was made from casinghead gas—natural gas.

By the Court: How?

A. By compression system.

By the Court: Had you done anything else to it in any other way.

A. No, sir.

By the Court: Now you may go ahead.

Q. State how that shipment of that product that you have described was billed?

By the Court: Did you ship any of it anywhere, ship any of it to Port Arthur.

A. Yes, sir.

By the Court: From Jenks?

A. Yes, sir.

By the Court: Now go ahead.

Q. State how the shipments were described.

The Court: Now, have you got the bill of lading of that shipment?

Mr. Payne: These are the bills of lading.

The Court: Is that the bill of lading?

A. Yes, sir.

The Court: Now, identify it.

Q. Do you identify that as being in your own handwriting? A. Yes, sir.

Mr. Payne: We offer these in evidence.

Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not being a purported bill of lading, but an instrument made in the handwriting of the witness, not of the railroad company nor its agent.

The Court: Let me see it.

Mr. Diggs: And the evidence of the witness shows—on the further ground the evidence of the witness shows the material shipped was not gasoline but casinghead gasoline.

The Court: Who is George Anderson, is that your name?

A. Yes, sir.

The Court: Now this is not a bill of lading, this is a shipping order.

A. That is what we use for a bill of lading.

The Court: Who gave you these?

A. My company.

Q. Is that your order to the railroad company to transport those cars. A. Yes, sir.

The Court: Well that is what is known as a shipping order.

Mr. Payne: They don't distinguish it, your Honor. They call them duplicate originals. I offer these in evidence.

The Court: Well, let them make their objections.

Mr. Diggs: We object as being incompetent, irrelevant and immaterial, and hearsay as to this defendant; on the further ground that the cars described here are not shown to have been received by the railroad mentioned, or to be gasoline or to have been transported in interstate commerce.

Mr. Payne: Your Honor, this is the beginning, we will follow that up.

The Court: Very well, let them be introduced in evidence, and let the record show it as read.

Mr. Diggs: Oh, I don't care about it being read your Honor.

Q. Have you any machinery or appliances or any other apparatus at Jenks for the purpose of accomplishing anything else than to compress casinghead gas into gasoline?

Mr. Diggs: To which we object.

The Court: Now, what is the question.

(Question read by the Reporter.)

The Court: That is immaterial whether they have or not. He has testified that this commodity shipped by this order, that the only thing he did to it was by compression.

Mr. Payne: I just wanted to show, your honor, in view of the two descriptions, that they were one and the same thing under certain circumstances. You will notice gasoline and liquefied petroleum gas. I wanted to pin those down to show that they are one and the same thing with different vapor tensions.

The Court: Well, if you want to make him an expert witness—

Mr. Payne: No, sir.

The Court: Well, you can't do that by comparison unless he is an expert.

Mr. Payne: I just wanted to bring out that he did not have anything there other than the casinghead gasoline plant.

The Court: Why is that material?

Mr. Payne: It is a distinction that will come up in the tariff.

The Court: That was permissible for them to show what they had there, but now he says, he says how he made it and that was all that was done, and you are laying the predicate. If they come back and join issue, that might make it competent, but it is not competent now and I will not permit it.

Mr. Payne: Very well, your honor.

Mr. Chambers: The citations are on those three sheets of paper you have in your hands, your honor.

Mr. Payne: There is just one further question.

The Court: Go ahead.

Q. Mr. Anderson, prior to this lawsuit did you ever hear of unrefined naphtha? A. No, sir.

Mr. Diggs: Just a moment. To which we object as being irrelevant, incompetent, and immaterial.

The Court: He is not an expert. Unless you qualify him as an expert I will not permit him to testify to that.

Mr. Payne: I just wanted to show the trade and custom.

The Court: But you first have to show,—you have to put a man in a position so that he would probably have heard it. It is just like,—no, I will not permit you to ask that.

Mr. Chambers: He is a man engaged in that particular business.

The Court: You have not qualified him as an expert. No, it is just like asking a man if he saw a fellow down on Fourteenth street, without putting him in a position that he had been down there and he would probably have seen him on Fourteenth street if he had been there.

By Mr. Payne: May I call the Court's attention to the fact we have shown in a general way that Mr. Anderson operates the same kind of a plant at Jenks and he is the Superintendent of Fuller Casing Head Gasoline Plant. Is it not likely under these circumstances that——

By the Court: Not with this predicate laid. Just to show that he operates these plants. It don't show his experience and how much he has handled it and then from all these commodities have you heard this commodity called unrefined naphtha then it is competent but you have not got that predicate in there.

Q. Mr. Anderson, how long have you been engaged in the connection of producing casinghead gasoline?

A. Pretty near seven years.

Q. How long have you been superintendent of plants?

By the Court: Now you have first got to qualify him and let him state that he knows what it is and describe it and say what the proper name is. Then you follow that up. This is negative evidence. That is the office of negative evidence.

By Mr. Payne: I wanted to show the term unrefined naphtha was unknown in the casing head gasoline world.

By the Court: I will permit you to do that if you will show that he is an expert and familiar with gasoline. Knows gasoline and its terms and commodities and so on. But you haven't done that.

Q. Did you have any technical education Mr. Anderson in the University or college. A. No, sir.

Q. Your only training has been in the actual experience.

A. Practical work.

Q. How many men have you under your—you are the superintendent of the plant, how many employees have you under you at all of your plants.

By Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial.

By Mr. Payne: Laying the foundation.

By the Court: Yes I would say so now. A man might be a superintendent and the very fact that he hadn't heard—that is carrying negative evidence too far.

By Mr. Payne: Alright, we will waive it your Honor, that is all.

*Cross Examination by Mr. Diggs.*

Q. When did you write the exhibit 22 and 23?

A. 4-30-1918.

Q. Did you ever present these shipping orders to the railroads, to the Midland Valley Railroad? A. Yes, sir.

Q. Yourself, you did that? A. Yes, sir.

Q. When did you present them to the Midland Valley Railroad? A. On the date described there.

By the Court: I want to get a little information, when they are made are they made in duplicate?

A. Yes, sir, four of them.

By the Court: You kept one copy.

A. These railroad *keeps* the original and I send the other three to the office.

By the Court: Go ahead.

Q. Do you know of your own knowledge whether the cars loaded mentioned in these two orders were in fact delivered to the Midland Valley Railroad Company? A. Yes, sir.

Q. You saw it delivered did you.

A. Well I could not say I saw them delivered.

Q. I am asking you about these two in here?

A. About them I could not say.

Q. About them you could not say. A. No, sir.

Q. Do you know whether the Midland Valley Railroad Company ever transported these cars? A. Yes, sir.

Q. How do you know it?

A. It was taken off our switch, our loading rack.

Q. They were taken off your switch? A. Yes, sir.

Q. Did you know of your own knowledge whether or not they were ever delivered?

By Mr. Payne: It is immaterial, but we will show by other witnesses that they were delivered.

By the Court: He can testify the reason why he said that, he said they set them out on the switch and they were moved away, from there—that is compound fact.

A. That is as far as I can say.

By the Court: That is the reason you say they were delivered to them and that they moved them?

A. Yes, sir.

Q. The substance in the cars mentioned herein was sold to the Texas Company F. O. B. the car was it not, or was it?



A. I cannot say.

Q. You don't know? A. No, sir.

Q. Do you know whether the Totem Gasoline Company ever paid the freight on the car mentioned in Exhibit 21?

A. No I don't know.

By the Court: He has not testified he did. Now you are travelling over territory that seems to me to be unnecessary because he never testified to that.

By Mr. Diggs: I know but he says they were shipped to Port Arthur. That is what I am trying to find out.

Q. Do you know whether they ever paid the freight?

A. No, sir, I do not.

Q. On the car mentioned in Exhibit 22?

A. No, sir.

Q. Do you know whether anyone ever paid it?

A. No, I know nothing of it.

Mr. Diggs: Now, if the Court please, we move to exclude the government's exhibits 21 and 22 on the ground—

The Court: I overrule the objection. I permitted it on the theory they are going to connect it up and follow it up.

Q. Mr. Anderson, I understood you once in your direct examination to say the substance in these cars, in answer to Mr. Payne's question, was blended; I understood you to say in answer to a question by the Court that they consisted alone of the product of your compression plant. What is the fact in that regard?

A. Sometimes we did ship straight run stuff and other times we shipped blended stuff, that is, blended with naphtha.

Q. Was the substance in these cars blended or unblended?

A. That was blended—well, one of them I couldn't say, the liquefied, I suppose, was straight run stuff.

Q. You suppose that the car in the shipping order described as liquefied petroleum gas was the native product of your compression plant, but the other one is blended. Do you know the proportions of the blend?

A. No, sir, not exactly. We had to regulate that according to the gravity of the gasoline.

Q. Do you know why you described one as gasoline and the other as liquefied petroleum gas?

A. Because the one went above ten pound vapor pressure; the one above ten pound vapor pressure was described as liquefied petroleum gas.

Q. What caused you to describe it when it was above ten pounds?

A. It was the rules we were given to load by, ship by.

Q. Given by whom?

A. Given by our office and the Commerce Commission.

Q. Given to your office by the Interstate Commerce Commission?

A. Yes, sir.

Mr. Diggs: That is all.

*Redirect Examination by Mr. Payne.*

Q. What did you mean by straight run stuff?

A. Well, unblended gas, no naphtha in it at all.

Q. You mean the straight casinghead?

A. Yes, sir.

The Court: Well now blended stuff, did you distinguish that as blended?

A. No, sir.

The Court: You took a quantity of the product from the casinghead gas gotten by compression, and then you mixed that, combined that with the naphtha; where did you get the naphtha?

A. The Texas Company at that time was furnishing us naphtha.

The Court: Got that from the Texas?

A. Yes, sir, I don't know whether it all came from the Texas, or where it came from.

The Court: Go ahead, take the witness.

Q. I notice on the shipping orders, Government's exhibits 22 and 23, that the printed form covers only two commodities, gasoline and liquefied petroleum gas, are they the only two products of your plant?

A. Yes, sir.

Q. State under what conditions you would ship your product as gasoline and under what conditions you would ship it as liquefied petroleum gas?

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not a proper question, in that he does not state what he expects the witness to answer and indicate what he is after, but leaves the witness to exercise his own judgment as to what the process of the products were.

The Court: Yes, I think that is too indefinite a question. I sustain the objection.

Mr. Payne: All right, that is all, Mr. Anderson.

(Witness excused.)

Whereupon Mr. CHARLES McCARROLL, having been produced, sworn and examined as a witness on behalf of the United States, testified as follows:

*Direct Examination of Mr. Charles McCarroll, by Mr. Payne.*

Q. State your full name, Mr. McCarroll?

A. Charles B. McCarroll.

Q. Where do you live? A. Kiefer.

Q. What is your business?

A. Assistant superintendent for Crosbie and Gillespie.

Q. What sort of business is Crosbie and Gillespie in?

A. Well, compression gasoline plant.

Q. A compression gasoline plant?

A. Yes, sir.

Q. State as briefly as you can what your processes of manufacture are beginning with the gas?

By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and hearsay evidence as to this defendant; it cannot be bound by the act or proceedings of others.

By the Court: What is the object of this evidence?

By Mr. Payne: There are five discriminate counts from Jenks and five from Kiefer.

By the Court: Their plant at Kiefer?

By Mr. Payne: Yes, sir.

By the Court: The objection is overruled.

By Mr. Diggs: We save our exceptions.

Q. Describe briefly your process of manufacture first beginning with the well?

By the Court: Get your shipping order.

By Mr. Payne: This witness did not make out the shipping orders, we have another witness for that.

By the Court: Let him stand aside and get that witness in here. Let's have some systematic process.

By Mr. Payne: I first thought I would show it was produced and then it was shipped.

By the Court: Go ahead.

Q. Go ahead Mr. McCarroll?

A. It was taken out of the well through a vacuum process, delivered to the plant and we put it through two stages, low stage and high stage, take the gasoline out and we blend into naphtha take about a third blended to certain gravity, deliver into tank cars and we are through with it.

By the Court: You get the casinghead gas from the well, and pipe it to your plant?

A. Yes, sir.

By the Court: And then you carry it through the compression process?

A. Yes, sir.

By the Court: Then blend that product with the naphtha?

A. Yes, sir.

By the Court: Go ahead.

Q. During the period from January 1, 1918, to June 1, 1918, did you manufacture some compression gasoline from the Texas Company?

By Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not binding upon this defendant.

By the Court: Overruled.

By Mr. Diggs: Exception.

By the Court: It looks to me like you could shorten this if you asked if he shipped any of this product to the Texas Company.

By Mr. Payne: Your Honor I want to show he sold it to the Texas Company at Kiefer and the Texas Company shipped it.

By the Court: Very well.

A. You want me to give the amount.

Q. No, just state whether you shipped anything during that period? A. Yes, sir.

Q. Whether you manufactured some compression gasoline for the Texas Company during that period and sold it to the Texas Company? A. Yes, sir.

Q. Do you recall the terms?

By the Court: Let me find out about that? Where did you deliver it to the Texas Company.

A. On the tank car on our siding.

Q. On your siding at Kiefer? A. Yes, sir.

By the Court: What is the allegation in your indictment?

By Mr. Payne: The allegation is as I remember, the Texas Company as consignor and the Texas Company as consignee shipped from Kiefer to Port Arthur, that they were actually shipped by the Texas Company.

By the Court: Let's see what it states. We are losing lots of time, you ought to know what the necessary allegations in the indictment are. Just read it to him—read what the allegation is—just let me have it.

Q. That throughout the last mentioned period the Texas Company— (beginning at page 5 your Honor.)

By the Court: Go ahead.

Q. And under your contract you delivered it to the Texas Company in the cars at Kiefer, that correct? A. Yes, sir.

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and not binding on this defendant and the contract that this witness had with the Texas Company being the best evidence of the contract.

By the Court: Well, I will strike out everything about the contract. I will let him prove this commodity was the kind and description that he delivered certain cars to the Texas Company.

By Mr. Payne: At Kiefer.

By the Court: Yes, at Kiefer.

Q. Mr. McCarroll, you stated that this casinghead gasoline was blended with naphtha, was it not?

The Court: How many cars of that kind?

A. In that length of time?

The Court: During that period.

A. I couldn't answer that just exactly. We delivered about forty-five to fifty a month.

The Court: Do you know that these cars were numbered, have you got any way to show him? You have alleged certain cars here.

Mr. Payne: I will connect that up to the cars, your Honor, when we get to the Texas Company; we have got the shipping orders and will show by the Texas Company that the contents of those cars were bought from Crosbie and Gillespie.

The Court: All right, go ahead. Let's get through. I am going to close this case on the 24th of April, you can count on that.

Q. Where did you get the naphtha with which you blended these shipments, that was delivered to the Texas Company at Kiefer?

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, and not binding on this defendant.

The Court: Objection overruled and exception saved.

Mr. Diggs: We save our exceptions.

A. From the Texas Company at West Tulsa.

Q. Where? A. West Tulsa.

The Court: Now during that period did you deliver to the Texas Company any other commodity other than as described by you?

A. No, sir.

The Court: Go ahead.

Mr. Payne: That is all.

The Court: Take the witness.

*Cross Examination by Mr. Diggs.*

Q. Mr. McCarroll, do you know of your own knowledge whether any of these products you have mentioned was delivered to the Texas Company?

A. Delivered it in their tank cars on our siding.

Q. Did you see that done yourself?

A. Yes, sir.

Q. Did you deliver any cars to the Texas Company on your siding on January 25, 1918?

A. I have no record of it here.

Q. I asked if you know? A. No, I don't think so.

Q. Why, I didn't catch your answer?

A. On January 25th what?

Q. 1918? A. Well, I will say I think we did.

Q. Do you know whether you did or not?

A. No, I wouldn't say.

Q. Do you know whether you delivered any car or cars to the Texas Company on your side track on February 16th, 1918?

A. No, I couldn't answer that.

Q. Do you know whether you delivered any cars to the Texas Company on your sidetrack on April 1, 1918?

A. No, sir.

Q. Or April 27, 1918? A. No, sir, I can't answer it.

Q. Or March 16, 1918? Do you know, Mr. McCarroll, of your own knowledge, whether any of your products ever went into a car marked T. C. X. 4193? A. Yes, sir.

Q. You do, when did it go in?

A. Well, I can't give you that.

Mr. Payne: Speak up a little louder.

A. I say, I can't give you the date.

Q. What causes you to remember the initial and number



of that car after more than a year after January 25, 1918, what impresses the initials and number of the car on your mind?

A. Well, I know we have loaded the car.

Q. Can you give me the initial and number of any other car? A. I cannot do it here.

Q. That you loaded on January 25th, 1918?

A. I cannot here.

Q. Can you give me the initial and number of any other car that you shipped on February 16th, 1918? A. No, sir.

Q. Well the number, initial, the number of any car that you shipped on March 16th, 1918?

A. No, sir, I didn't ship any.

Q. That you put on the side track?

A. I load them, I don't put them on the side track.

Q. Any cars you loaded March 16, 1918? A. No, sir.

Q. Or any car you loaded on April 1st, 1918? A. No, sir.

Q. April the 27th, 1918? A. No, sir.

Q. Is it not a fact that the reason you say that you recollect that you shipped this car that you loaded car initial T. C. X. No. 4193 on January 25th, 1918, is because I mentioned it, called these initials and number from this paper?

A. State that question again.

Q. Is not the sole basis of your statement that you remember that you loaded with your product car T. C. X. 4193 on your side track on January 25, 1918, is because I read those initials and numbers from this instrument?

The Court: What is your answer to that?

A. I cannot understand the question.

The Court: He asked you a while back a certain car, 4193?

A. Did he ask me the date?

The Court: No, not the date.

A. Well, I loaded the car.

The Court: He asked you if you didn't remember the number because he gave it to you.

A. Why he can read lots of numbers, I can answer it, but I have no record of it, I don't have to see the record.

The Court: Did you ever compare these numbers in these indictments?

A. I have never seen them.

The Court: Go ahead.

Q. Isn't it a fact, all you know, Mr. McCarroll, about this is that you loaded certain cars with your product for the

Texas Company on your sidetrack and you have no independent recollection of any particular date or any particular car number or initial?

A. No, I have not.

Mr. Diggs: That is all.

*Redirect Examination by Mr. Payne.*

Q. Mr. McCarroll, did the Texas Company furnish you with the cars in which you loaded your blended compression gasoline? A. Yes, sir.

Q. State whether the initial on those cars T. C. X. were they the private cars of the Texas Company? A. Private.

Q. Yes? A. Yes, sir.

Q. They were Texas Company's own tank cars so that when he read to you T. C. X. you know that that was a Texas Company car, is that correct? A. Yes.

Q. And did you load anything during the period that I have mentioned in the cars of the Texas Company except the blended compression gasoline that you sold to the Texas Company? A. No, sir.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, not binding on this defendant, leading, calling for a conclusion of the witness.

By the Court: I asked him myself. Why do you want to go over it?

By Mr. Payne: I wanted to show that everything he loaded during that period to the Texas Company would necessarily include it.

By the Court: That has already been asked. I asked the question myself if he loaded anything other than this commodity he described for the Texas Company. Now if that don't include it I would like to know what does?

By Mr. Payne: It certainly includes it your Honor, that is all.

(Witness dismissed.)

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Thereupon, E. J. SHIELDS, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Shields? A. E. J. Shields.

Q. Where do you live? A. Tulsa, 1707 Rockford.

Q. At the present time where are you employed?

A. At the present time I am not employed.

Q. Where were you last employed?

A. By the Constantine Refinery at Duvall, Oklahoma.

Q. Were you at one time with the Texas Company?

A. I was.

Q. Between what dates.

A. August, 1915, and August, 1918.

Q. Where were you stationed while you were employed by the Texas Company? A. West Tulsa Refinery.

Q. Tell me which are those—what those papers are, whether they are in your handwriting,—tell me please which of those papers are in your handwriting?

A. The shipping order and bills of ladings covering shipments of—two of them.

By Mr. Payne: Mark these Government's Exhibits 24 and 25.

Q. I show you two papers marked Government's Exhibits 24 and 25 and will ask you if you identify these documents as made out by you?

A. They were made out according to my instructions.

Q. Under your supervision?

A. Yes, sir. I could not say I made them out personally.

Q. State what the papers are please sir.

A. They cover shipments—

By Mr. Diggs: We object incompetent, irrelevant and immaterial and not the best evidence.

By the Court: I overrule the objection.

By Mr. Diggs: I except.

By the Court: State what they are but not the contents.

A. Shipping orders or bills of lading covering movement of cars from Kiefer, Oklahoma, to Port Arthur, Texas.

By the Court: They are the best evidence as to what they are.

By Mr. Payne: I offer these in evidence.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, no connection of the defendant being shown this being transaction with different parties with whom the *plaintiff* has not shown to have any connection and undertaking to bind it by acts of third parties.

By the Court: The objection is overruled.

The Court: Let the record show they are read.

Q. Referring to Exhibits 24 and 25, do you know that the cars enumerated in these shipping orders or bills of lading

were shipped by the Texas Company at Kiefer, Oklahoma, consigned to the Texas Company at Port Arthur, Texas?

A. I do know that the cars did move from Kiefer to Port Arthur, Texas.

Q. Do you know that these particular cars moved?

A. Well, I cannot remember that those exact cars did move.

The Court: In what connection was he employed at that time?

A. By the Texas Company.

The Court: Now do you know that they received these cars covered by these shipping orders?

A. I could not swear to it. Because I have not seen the record for some time.

Q. You said you were located at West Tulsa?

A. Yes, sir.

Q. Whereas these shipping orders purport to cover shipments from Kiefer? A. Yes, sir.

Q. How did that happen, Mr. Shields, that you could issue shipping orders at West Tulsa for shipments moving south-bound from Kiefer?

A. We had at the time I was employed by the Texas Company, we had a contract with the Crosbie and Gillespie plant to take their output of casinghead gasoline, and at the time that these people would have these cars ready for shipment we would send our inspectors to the Crosbie and Gillespie plant to inspect the cars and if O. K. they would be shipped to Port Arthur. The bills of lading would be made out at West Tulsa and the inspector would take them with him and if the cars were O. K. he had them signed by the agent at Kiefer or Glennpool and shipped to Port Arthur there. We had no office at Kiefer at that time.

Q. Do you know that during the period from January 1, 1918, to June 30, 1918, that the Texas Company bought from Crosbie and Gillespie at Kiefer all of the output from their plant at Kiefer? A. I do.

Mr. Diggs: To which we object as being incompetent irrelevant and immaterial, and a transaction between third parties with whom this defendant is not connected or identified.

The Court: That is admitted only for the identification of these cars.

Mr. Payne: That is all.

Mr. Diggs: That is all.

(Witness excused.)

The Court: I will let you recall Mr. McCarroll. I will let you ask that question. I was under the impression that the evidence showed. But I will let you ask the question if all the cars loaded, whether or not it was the product blended with the naphtha. You may recall him and ask him that.

Whereupon CHARLES McCARROLL was recalled for further direct examination by the Government:

Mr. Payne: I did not catch the significance of your Honor's statement.

The Court: I remember the question I asked him, if all the product described made by that plant was turned over to the Texas Company and he said yes, but he described the product, casinghead gas extracted by compression and he described the blended article, so there might be some confusion, so now you can repeat the question that I did not permit you to ask him.

*Examination by Mr. Payne.*

Q. Are you the same Charles McCarroll who testified a few moments ago? A. Yes, sir.

Q. Did you receive from the Texas Company at Kiefer cars of naphtha shipped to Kiefer from the Texas Company at West Tulsa? A. Yes, sir.

Q. And what did you do with that naphtha?

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial.

The Court: Objection is overruled.

Mr. Diggs: I except.

A. I used it to blend with.

Q. In what proportion did you blend the casinghead gasoline?

A. About a third, used about one-third naphtha, different—

Q. Do you know what the specifications for the product you sold to the Texas Company were?

A. I cannot answer it.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial.

The Court: He says he don't know. Now you testified as to loading cars for the Texas Company. Now was all that—state whether or not these cars that were loaded, were they all loaded with the blended commodity?

A. Yes, sir.

Q. Do you mean by that——

A. It was shipped under two different gravities, six months during the year they required a certain gravity.

The Court: Was it all blended?

A. All blended.

The Court: Blended with the naphtha and the commodity that was extracted by compression from the casinghead gas?

A. Yes, sir.

(Witness excused.)

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By the Court: Call your next witness.

Whereupon, W. K. HOLMES, called as a witness on behalf of the United States and being first duly sworn and examined testified as follows:

*Direct Examination of Mr. Holmes by Mr. Payne.*

Q. State your name please? A. W. K. Holmes.

Q. What is your position Mr. Holmes?

A. Superintendent of the Texas Company's Refinery at West Tulsa.

Q. How long have you been Superintendent of the Texas Company's Refinery at West Tulsa? A. Nearly five years.

Q. Mr. Holmes did the Texas Company—strike that out—did the Texas Company purchase any casinghead gasoline from Crosby and Gillespie?

By the Court: That is immaterial about how they got it, did they get it, did they receive the product and did they ship it, did they consign it? Not any necessity about how they got it.

Q. Did your Company receive blended compression gasoline from Crosby and Gillespie at Kiefer, Oklahoma?

By Mr. Diggs: To which we object, incompetent, irrelevant, and immaterial.

By the Court: Now what do you call it.

By Mr. Payne: I wanted to check up the products, one by one and show that they were blended but I appear to limited to shipping the blended product so I called it blended compression gasoline.

By the Court: Now you are using for this purpose—attempting to lay the predicate. You proved by those



two witnesses what it was and how they made it, and they loaded it into Texas cars. Now you can take up and prove what they did with those cars.

By Mr. Payne: I want to show what kind of naphtha went into it.

By the Court: How does he know?

By Mr. Payne: He manufactured it.

By the Court: How does he see it—how does he know unless he inspected it?

By Mr. Payne: He has the specifications

By the Court: That would be long range swearing for him to sit at West Tulsa and swear the kind of stuff that was put in the cars.

By Mr. Payne: He wouldn't swear to it unless he knows your honor.

By the Court: Did you ever see any of it?

A. Yes, sir.

By the Court: Whereabouts?

A. At both places.

By the Court: After it was loaded?

A. Yes, sir.

By the Court: Well, you can go ahead.

Q. State the processes Mr. Holmes by which that naphtha was manufactured.

By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and for the further reason that it is not shown that the material inquired about is the material that went into the cars named in the indictment.

By the Court: You will have to do that.

By Mr. Payne: That will be connected up but we must necessarily start with the material.

By the Court: You will have to do that now before I will permit that to go in.

Q. Did your Company have an agreement to take the output of the plant of Crosby and Gillespie at Kiefer?

A. Yes, sir.

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial.

By the Court: I sustain the objection, to that. I sustained the objection to the other evidence where he talked about the agreement, and excluded it from the jury.

It is just what they did. You have proof by the people that manufacture it.

By Mr. Payne: Alright, your Honor.

Q. Did the Texas Company receive from the Crosby and Gillespie Company compression gasoline plant at Kiefer during the period from January 1st, 1918, to June 30th, 1918, the entire output of their plant at Kiefer?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial.

By the Court: How could he know that, they turned all of it over to them.

By Mr. Payne: I asked him if he knew?

By the Court: Do you know as a matter of fact they turned all that output of that plant over to them?

A. Our contract calls for it.

By the Court: That might be a reason why you might believe it. Now they testified that they loaded these cars why can't you get the man that knows and received these cars that were shipped and then prove that they set those cars up there—

By Mr. Payne: It would just involve a lot of record.

By the Court: You are not going to get it in that way because it is not according to law. They object and I sustain the objection.

By Mr. Payne: All would necessarily include some.

By the Court: How does he know they got all.

By Mr. Payne: He says he does.

By the Court: No, he says he knows because that contract calls for—what—I might contract for all the mules a man got and get 50 is that evidence? Now if you could go and show there were only 50 mules in the lot and that you got 50 that would be proof but circumstantial evidence that he got all of them—

By Mr. Payne: Alright we will arrange to get the documents to show just what cars he received. The witness is excused for the present.

(Witness excused.)

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Whereupon JAMES BAXTER SAINT, called as a witness on behalf of the United States, after being first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name Mr. Saint.

A. James Baxter Saint, J. B. Saint.

Q. What is your position Mr. Saint?

A. Chief clerk of the refining department of the Texas Oil Company at the Port Arthur works.

Q. How long have you held that position.

A. That position I have held about five years.

Q. A subpoena was served upon the Texas Company to produce certain documents. Have you those documents with you?

A. I think I have, yes, sir.

The Court: Haven't you already identified them and know what you want?

Mr. Payne: No, I have not.

The Court: Well, let him stand aside then.

Q. Have you got the freight bill covering T. C. X. 4193?

A. I have just got twenty-two cars, I will have to look and see.

The Court: Looks to me like you all could systematize this and get these witnesses and they understand what instruments they are going to testify about and bring them into the Court House and be ready.

Q. You were subpoenaed to bring in freight bills covering the following cars: T. C. X. 4589? A. T. C. X. 4589.

Q. 4589? A. Yes, sir.

Q. 4558? A. Yes, sir.

Q. 3104? A. 3104, yes, sir.

Q. 2777? A. Yes, sir.

Mr. Payne: If the Court please, may I be excused and substitute Mr. Gann?

The Court: Very well.

*Examination by Mr. Gann.*

Q. What was the last one? A. 2777.

Q. 2690? A. Yes, sir.

Q. 633? A. Yes, sir.

Q. 3112? A. 3112.

Q. 4193? A. Yes, sir.

Q. 4574? A. Yes, sir.

Q. 3012? A. Yes, sir.

Q. 2740? A. Yes, sir.

Q. 4428? A. Yes, sir.

Q. 2901? A. Yes, sir.

Q. 3107? A. Yes, sir.

Q. 1881? A. Yes, sir.

Q. 3113? A. Yes, sir.

Q. 2226? A. Yes, sir.

Q. 3068? A. Yes, sir.

Q. 3058? A. Yes, sir.

Q. 4435? A. Yes, sir.

Q. 4691? A. Yes, sir.

Q. And have you, Mr. Saint, produced under this subpoena the original freight bills covering collections of undercharges on these cars T. C. X. 3104?

A. Undercharges, 3104? yes, sir.

Q. 2690?

Mr. Diggs: If the Court please, I understand this is to identify papers and what he says about it don't go to the jury.

The Court: Yes.

Q. No. 2777? A. 2690—Yes, 2777.

Q. 633? A. Yes, sir.

By Mr. Gann: I ask to have the exhibits marked for identification.

By the Court: What are these?

A. These are the papers that cover the movement of these 22 cars from points of shipment to Port Arthur, Texas, payment of freight charges and disposition of contents of each car in the tank.

By the Court: Very well, are these 22 cars in the indictment?

By Mr. Gann: Yes, sir.

By the Court: By whom were these 22 cars consigned who was the consignor?

Q. State that to the Court? A. By different consignees.

By the Court: Offer them one at a time so he can state what it is.

Q. Take the first car? A. 4589.

Q. By whom was that car shipped?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial and not the best evidence.

By the Court: What does that paper show, this is for information for the Court.

A. I don't by whom that car was consigned, it shows there F. G. Company.

Q. Is it not T. G. Company? A. Yes, sir, it is indistinct railroad writing.

By the Court: What is that for?

A. Totem Gasoline Company.

By the Court: From where?

A. Jenks.

Q. To Port Arthur? A. Yes, sir.

By the Court: Very well introduce that.

By Mr. Gann: I wish for the reporter to mark this for identification.

A. Now you will find these records are not intact.

By the Court: Identify that as exhibit 26. Now *that* let them make their objection.

By Mr. Diggs: I object as being incompetent, irrelevant and immaterial, tends to prove no issue in the case and for the further reason the paper has not been properly identified and it shows on its face to be a mere memorandum collated from other instances.

By the Court: What was that paper?

A. That is simply a history of each car shipped and received to Port Arthur.

By the Court: I will not permit that to be introduced.

Q. Have you the freight bills for that car?

A. I have the duplicate freight bill of each car, receipted by the agent of the Texarkana and Fort Smith Railway.

The Court: Have you the original freight bills?

A. I have not the original, I have a duplicate.

The Court: Made at the same time?

A. Yes, sir, it is a duplicate original.

The Court: That is a duplicate original made by the same hand at the same time, that is a duplicate original you have got.

Q. Have you a paper covering car 4580, the duplicate original?

A. Yes, sir.

Q. The freight bill. I will ask to have it marked for identification.

(Instrument marked for identification Government Exhibit No. 27.)

Mr. Gann: I offer it in evidence.

Mr. Diggs: To which we object as being incompetent, irrelecant and immaterial, and for the further reason that the instrument does not appear to be signed by

any person authorized either by the Texarkana and Fort Smith Railway Company to so sign it, or by the Texas Company, having merely a rubber stamp endorsement and not shown to be authorized by any person.

The Court: All right, show it to him and ask him what it is.

Q. What is the paper that I show you marked Exhibit 27?

A. That is a receipt of the Texarkana and Fort Smith Railway Company, dated February 18th, 1918, for freight charges paid them on T. C. X. 4589.

Mr. Diggs: We object as incompetent, irrelevant and immaterial, the paper, if admissible, being the best evidence of its contents.

The Court: Well, your objection is overruled.

Mr. Diggs: We save our exception.

The Court: Give it to me. Now you say this is the carbon copy. I understand this is a carbon copy made with the original?

A. Yes, sir.

The Court: At the time the receipt was made?

A. Yes, sir.

Mr. Diggs: Objected to as incompetent, irrelevant and immaterial, unless the witness states that he saw it so made, or that it was made under his direction.

The Court: Well now I will get this.

A. Got it from the Texarkana-Fort Smith Railway.

Q. When did you get it?

A. I presume on the 18th of the month, as receipted by his stamp.

The Court: The day it was executed.

A. If you will let me explain——

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial.

A. We require an original and a duplicate original both of which are signed and receipted. The original is kept in our New York traffic department.

The Court: Never mind about that. What is that

A. W. L.?

A. That is simply the initials of A. W. Law, the clerk who entered this freight bill in the record.

The Court: Do you know his initials?

A. Yes, sir.



The Court: Do you know his handwriting?

A. Yes, sir.

The Court: Is that his handwriting?

A. Yes, sir, by A. W. Law.

The Court: Clerk in what department?

A. In the storehouse department under my supervision.

The Court: Were you in the employ of the—in what capacity were you working on the date when this was made?

A. My present capacity, chief clerk.

The Court: Of the Texas Company?

A. Yes, sir, at Port Arthur.

The Court: Do you know this freight was paid to the railroad company?

A. As evidenced by the receipt, yes, sir.

The Court: Well, do you know it independent of that?

A. Yes, sir, I have the cancelled voucher.

Q. Have you the cancelled vouchers with you?

A. Yes, sir.

The Court: Get that.

Q. Covering car 4589?

A. Yes, sir, and a great many others.

Q. Is that the original voucher? Yes, sir.

Q. Taken from the record of the Texas Company?

A. Yes, sir.

Q. In response to that subpoena? A. Yes, sir.

Mr. Gann: I ask that it be marked for identification Exhibit 28 and I now offer the same in evidence.

Mr. Diggs: I object to that as being irrelevant, incompetent and immaterial, and for the further reason that it does not show the same has ever been paid to them, nor does the same appear to have been made payable to the railroad company mentioned. The instrument on its face recites it is payable, when properly endorsed, and notes the endorsements appearing thereupon.

Q. I will ask you to state what the record is.

The Court: Let me see it first.

Mr. Diggs: The Court can tell what the record is.

Mr. Gann: Surely.

The Court: The way I understand this voucher,

B-73, draft drawn by the Texas Company in favor of the South Texas Commercial Bank of Houston on the First National Bank of Houston, with the, and that is called a voucher to take up these drafts here, draft No. 570, given to the Texarkana and Fort Smith Railroad company, by J. E.—who is that?

Mr. Gann: Draft given to J. E. Countryman, agent of the Texarkana and Fort Smith Railway.

The Court: Mr. Countryman draws the draft, or the draft is drawn—drawn by J. M. Selton, who is he?

A. Treasurer of the Fort Smith Railroad Company.

By the Court: That is for \$22,826.87, that is marked paid February 24, 1918, by the South Texas National Bank. Here is another one drawn in the same manner for \$9,193.10.

By Mr. Diggs: We object to the two drafts as being not within the issues in this indictment and not showing the payment of freight on any cars mentioned in the indictment and for the further reason there appeared to be no acceptance or endorsement by J. M. Salter thereon.

By the Court: Well the presumption is they paid him personally if there is no endorsement to anybody else.

By Mr. Diggs: And there is nothing to show the rubber stamp endorsement thereon were made by J. M. Salter or by his authority or by whom.

By the Court: What position do you hold with the Texas Company?

A. Chief clerk of the Refining department at Port Arthur, Texas.

By the Court: Go ahead.

Q. Take the next car?

By Mr. Gann: I offer this in evidence.

By Mr. Diggs: Has your Honor ruled on that?

By the Court: I want to ask him a question. Where do you say you got those papers?

A. All original vouchers from my office and all paid vouchers from the office at Houston, Texas.

By the Court: What do you mean by paid vouchers?

A. Files kept in the office by the Auditor at Houston, Texas.

By the Court: All of the paid vouchers?

A. Of all departments throughout the United States.

Q. This man has charge of all payments?

By the Court: Is that so?

A. Yes, sir.

By the Court: You know these payments were made? Do you know they have been paid?

A. Yes, sir.

By the Court: Very well they are admitted on that statement.

By Mr. Diggs: We object, incompetent, irrelevant and immaterial, and as to the custom of the Texas Company in keeping paid vouchers; not being binding on this defendant and nothing therein tending to show that the money was ever received by the railroad company mentioned nor was it in payment of any car mentioned in the indictment.

By the Court: Overruled.

By Mr. Diggs: Exception.

Q. Take the next car?

A. May I complete the deal on that car by explaining that the agent in billing this car assessed a rate of 33 cents—

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and not the best evidence.

By the Court: Overruled.

By Mr. Diggs: Exception.

A. I simply offer that charge because it doesn't complete the record of the receipt of that car unless this is admitted covering an undercharge on that car which is part of that exhibit.

By Mr. Gann: I ask this be marked for identification.

A. This is part of the Voucher L-409; this voucher covers the payment of that.

Q. This identified this as an additional voucher?

A. Yes, sir.

By Mr. Gann: I ask to have it marked for identification.

By the Court: That was also covered by these drafts.

A. No, sir, that is covered by a separate draft, instead of paying this by draft it was paid direct to the agent and receipted on the back by the agent, the agent himself has receipted.

By Mr. Gann: I ask that be marked also.

By the Court: Do you know the agent's handwriting?

A. Only by his name, Judge, it being on papers that I think he signed. I wouldn't want to swear I know his handwriting.

By the Court: Have you seen it enough to know it?

A. I wouldn't want to say that I have, No.

By Mr. Gann: The fact that the freight charge is paid and this is merely an additional freight charge.

By the Court: I will not admit that receipt as to the additional freight charge.

Q. Take the next car, 4558? A. Yes, sir.

Q. You have the original duplicate?

A. I have the original duplicate of that shipment covered by the same voucher covering the first car B-73, and there is another one there.

Mr. Gann: I ask to have this identified as Exhibit 30 and offer the same in evidence.

Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not shown to be issued by the authority of the Texarkana-Fort Smith Railroad Company or signed by any person on its behalf, merely on its face shows to be an instrument, a copy of another instrument which copy is not signed and the rubber stamp appearing on the face thereof not shown to be made by the authority of the railroad company or any of its agents or employees.

The Court: Have you got the others—offer them together as one exhibit.

Mr. Diggs: The Court overruled my objection.

The Court: Yes, objection overruled.

Mr. Diggs: I except.

Mr. Gann: I offer exhibits offered in evidence—this exhibit is offered in connection with the draft for \$22,-826.87, and draft for \$9,193.10.

Mr. Diggs: I object to the introduction of the said draft as being irrelevant, incompetent and immaterial, because it does not appear said draft has been paid or the amount thereof received by the Texarkana and Fort Smith Railroad Company or any person authorized by it.

The Court: The objection is overruled.

Mr. Diggs: I except.

Q. The freight charges were paid on that car, were they?

A. Yes, sir.

Q. Take the next car, 3104, have you the original duplicate paid freight bill covering car 3104? A. Yes, sir.

Q. And also the voucher covering that car?

A. Yes, sir.

Mr. Gann: I ask that the exhibits be identified.

(Which exhibits were marked for identification as Government Exhibits 31 and 32.)

The Court: Now why don't you wire and get the auditor of this company and get him here and you will get it in much quicker. If they start in on these technical objections I will keep you here three months, and adjourn this jury over. If you start in that I will do that and get it all in here.

Mr. Diggs: I object to the Court stating in the presence of the jury that they are technical objections, that we ought not to make.

The Court: I didn't say you ought not to make them. I say it will take up the time of this Court. Proceed.

Mr. Gann: I offer Government Exhibit 32 in evidence.

Mr. Diggs: I would suggest they identify all these and then offer them at once. It will save time.

The Court: No, just withdraw these and bring the agent of that railroad and the auditor of the Texas Company.

Mr. Gann: The government withdraws all the exhibits offered in connection with the testimony of the witness Saint.

The Witness: Judge, may I explain, you say wire for the auditor. Now the man that gets up the draft is Mr. Guy Carroll.

The Court: There is no question about the draft. Now the man they want is the man that knows these drafts have been paid, that he has audited the books and knows it has been paid.

A. I can state that has been paid.

The Court: How do you know it has been paid?

A. By the cancellation of the bank.

The Court: How do you know that is the bank's cancellation.

A. We have been doing business with them and that is their cancellation on all vouchers.

The Court: I will permit you to go ahead then.

Mr. Gann: Strike out the withdrawal of the exhibits please.

Q. Take the next car.

The Court: No, you prove by him what he says here is not in that record.

Q. Have the freight charges on 3104 been paid to the Agent of the Texarkana and Fort Smith Railroad Company by the Texas Company?

Mr. Diggs: To which we object, incompetent irrelevant and immaterial, and this witness showing that he is the regular auditor or bookkeeper of the Texas Company.

By the Court: Very well I will let him answer the question if he knows.

By Mr. Diggs: Exception.

Q. Do you know of your own knowledge that the freight charges have been paid? A. Yes, sir.

By Mr. Diggs: Repeat our objection to that.

Q. And they have been paid? A. Yes.

Q. Take the next car 2777? A. Car 2777.

Q. Have you the original duplicate freight bill and the voucher? A. Yes, sir.

By Mr. Gann: I would like to have these exhibits marked for identification.

Mr. Diggs: Mr. Saint did you see—

By the Court: I will not permit you to cross examine this witness until your time comes.

By Mr. Diggs: I now ask permission of the Court to examine this witness for the purpose of ascertaining whether this is a duplicate original made by the Texarkana and Fort Smith Railroad.

By the Court: I will permit you to do that when you come to cross examine. Proceed.

By Mr. Diggs: Exception. We object to Government's Exhibit No. 33 as being incompetent, irrelevant and immaterial, not shown to be made by any person in the employ of the Texarkana and Fort Smith Railroad Company; to be unsigned by any agent of said company or showing that the car mentioned therein was ever received by said company.



By the Court: That is covered by one of those drafts?

By Mr. Gann: Yes, sir.

By the Court: That is covered by one of those receipted drafts where you testified the freight was paid, that right?

A. Yes, sir.

By Mr. Diggs: You are offering this too as a part of them?

By Mr. Gann: All or a part of the vouchers, together the draft is made a part of it.

By Mr. Diggs: We object to that part of Plaintiff's Exhibit 34 appearing to be a bill or voucher to the Southwest Texas Commercial National Bank for the reason that the same is not endorsed and the J. H. Wilson, it looks like that is his name and he is not shown to be an officer of the Texas Company or is authorized to draw checks and it appears on its face to be for some department agent and not shown that it ever went through the hands of the bank nor was paid by them and I make the same objection to that part of exhibit 34 marked voucher D-522 on the same grounds. I object to that part of the Exhibit, Plaintiff's Exhibit No. 34 bearing the number 534 and purporting to be a draft drawn to the order J. N. Salter and signed by J. C. Countryman as the handwriting of J. C. Countryman has not been shown and it appears to be his signature by another person who is not shown to have any authority to sign his name to the draft nor is the said J. E. Countryman shown to be an officer of the Railroad Company or the said A. R. Bank by whose name its purports to be signed is an officer of the Company or has authority to sign the same and I make the same objection to that part of Plaintiff's Exhibit 34. No. 585 being a like draft signed by the same person and for the further reason there is nothing on the face of the said papers to show they have ever been paid except the rubber stamp purporting to contain the name of the Southwest Commercial Bank said stamp not shown to have been affixed by any officer of the bank or any employee having authority to fix the name thereto.

The Court: Where did you get this voucher?

A. I got it from our auditor at Houston, Texas, our department agent, he is our auditor, they are in his files in Houston.

The Court: Now this voucher here, do you know

how the South Texas National Bank, are you conversant with the way they handle vouchers and how they mark them paid?

A. I am conversant with how all banks handle them, and that is marked in the same way, in the usual way as handled by all organizations of that kind.

Mr. Diggs: We object and ask to have the answer of the witness excluded as being incompetent, irrelevant and immaterial, and tending to show a general custom to which the defendant is not connected, and not being responsive to the question.

The Court: Very well; objection is overruled.

Mr. Diggs: We save our exception.

The Court: Now tell this jury whether or not that draft has been paid.

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, because the witness is not shown to have sufficient knowledge.

The Court: Very well, ~~state~~ whether or not that draft has been paid.

Mr. Diggs: We save our exceptions.

A. I stated with all commercial assurance that that draft has been paid.

Mr. Diggs: We object and ask that the answer of the witness be stricken, as incompetent, irrelevant and immaterial, and in his answer he states that with all commercial assurance the draft has been paid.

The Court: Why do you say with commercial assurance it has been paid.

A. Because it bears evidence of having passed through the usual channels before it reaches the disbursing officer for the final files—

Mr. Diggs: We ask that the answer of the witness be excluded on the ground it is incompetent, irrelevant and immaterial, and a conclusion of the witness, the fact on which said conclusion is founded not being stated.

The Court: Now, I believe they are going to insist on these technical rules. I will require you to send and get those witnesses.

Mr. Gann: I suggest all these exhibits be withdrawn and we re-enter the proof.

The Court: Very well.

Mr. Gann: Mr. Reporter, strike from the record all the testimony about those exhibits.

The Court: Now I will give notice to the defense that you all had better be ready to toe the law.

Mr. Diggs: We object to the court making the statement in the presence of the jury to counsel for the defendant which implies that they are making objections not authorized by law, which objections the court has practically sustained.

The Court: It might be authorized by law but they might be technical objections that only delay this court and take up time. Now we will not discuss it.

Mr. Diggs: Give me an exception.

The Court: Gentlemen, you will not consider what the court says when he is dealing with the lawyers in this case. That is a matter the court will take care of and the jury will not consider it in any way whatever for the present.

Witness excused.

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And thereupon A. A. TOPPING, recalled for further direct examination by the Government, testified as follows:

*Direct Examination by Mr. Paune.*

Q. Are you the same Mr. Topping that previously testified? A. Yes, sir.

Q. Referring to the tariff naming the rate on gasoline from Kiefer to West Port Arthur in—strike that out—have you before you the original official copies of the tariffs filed with the Interstate Commerce Commission by the various railroads interested in this case, to-wit, the St. Louis-San Francisco Railroad Company, the Midland Valley Railroad Company, the Kansas City Southern Railroad Company, the Texarkana and Fort Smith Railroad Company, the Atchison, Topeka and Santa Fe Railroad Company, and the Gulf Colorado and Santa Fe Railroad Company? A. I have.

Q. Referring to the tariffs naming the rate on gasoline from Kiefer, Oklahoma, to West Port Arthur, Texas—

The Court: Now when was that tariff filed?

Q. In force December 2nd, 1916.

Mr. Swacker: I object because the tariffs themselves are the best evidence.

The Court: Produce them, introduce them here in the record.

Mr. Payne: May it please the court—

The Court: I will give you permission to withdraw them later on.

Q. Have you got the tariffs there?

A. Yes, sir.

Mr. Payne: Identify this as Government's Exhibit, the two are in one, identify it as one exhibit, 36.

Q. Mr. Topping, I show you two sheets or pamphlets marked Government's Exhibit 36, and will ask you if they are the original tariffs as filed with the Interstate Commerce Commission? A. They are.

The Court: When do they show they were filed, point out the file mark.

A. Original tariff filed June 12, 1914, there have been filed supplements from time to time in the tariff down to supplement 64.

Q. State the I. C. C. number of that tariff and the number of the supplement thereto?

A. This is F. A. Leland, agent, I. C. C. No. 1048, to which there have been filed sixty-four supplements.

By the Court: Does that supplement show the file mark on them?

A. They do, yes, sir.

By the Court: Does that tariff show the rate on gasoline from Kiefer, Oklahoma, to West Port Arthur, Texas.

A. It does.

Q. Does that rate apply over the St. Louis and San Francisco Railway Company?

By Mr. Swacker: I object, the tariff is the best evidence of what they show, or how they apply.

By the Court: He can point it out, he is an expert, your objection is overruled.

By Mr. Swacker: An exception.

By the Court: Go ahead.

Q. Does the Kansas City Southern Railway Company and Texarkana and Fort Smith?

By the Court: Wait a minute. Now point out the railroad designated by them.

Q. State the page number?

A. St. Louis and San Francisco Railway Company shown on page 5.

Q. Shown as what?

A. Showing as concurring in this tariff under powers of attorney, issued to Mr. Leland.

Q. Who is F. A. Leland?

A. F. A. Leland is agent for the southwestern carriers generally.

Q. Do you mean that he is agent for the railroads in the southwestern territory? A. I do, yes, sir.

Q. What do you mean generally speaking by southwestern territory?

A. That part of the country west of the Mississippi river and south of Arkansas. It includes generally speaking a part of Louisiana, all of Texas, all of Oklahoma, and a portion of the State of Arkansas.

By Mr. Swacker: I would like to object to the witness attempting to testify concerning an agency which is not shown to have been in writing or how effective.

By Mr. Payne: He is only testifying to what the tariff purports to show.

By the Court: I will only permit him to testify what the tariff shows.

By Mr. Swacker: I ask that his previous testimony be stricken out.

By the Court: If the tariff don't show that it will be stricken out. If it is not shown by that record. You all know how to turn to that and find that.

By Mr. Payne: I call the court's attention to the notice on here "Issued by F. A. Leland, Agent."

By the Court: Turn to it and read it.

Q. State how the first page reads as to the agency.

By the Court: Read that part of it for the benefit of the gentlemen that are objecting as well as the jury.

A. Issued by F. A. Leland, Agent, St. Louis, Missouri.

Q. Does the tariff show it was issued by F. A. Leland under a power of attorney from the St. Louis—

By the Court: Read what it says, you ought to know how to ask the question.

Q. Read what it says with reference to the power of attorney of the St. Louis and San Francisco Railroad?

A. On pages 4 to 6 inclusive it reads "participating carriers names of carriers. There is included—

By the Court: Well read under that sub-head.

A. "Atchison, Topeka and Santa Fe Railroad under power of attorney to F. A. Leland, F. X. 1-33, Gulf Colorado and

Santa Fe Railroad Company, Form F. X. 1-25. Midland Valley Railroad Company Form F. X. 1-18. St. Louis San Francisco Railroad Company Form F. X. 1-100. Texas and New Orleans Railroad Company Form F. X.—

Q. Never mind about that—

A. The Kansas City Southern Railroad Company F. X. 1 number 24; Texarkana and Fort Smith Railroad Company, F. X. No. 20; St. Louis and San Francisco and Texas Railroad Company F. X. 1 number 23.

By Mr. Swacker: I object, no such road as I recall described in the indictment.

By the Court: What is that?

A. I read St. Louis, San Francisco & Texas Railroad Company.

By Mr. Payne: Strike that out that is not involved in the indictment.

Q. Turn to the page in the tariff and state the page number and if it is in the supplement, state the page number of the supplement which shows the rate on gasoline from Kiefer to Port Arthur, to West Port Arthur?

By the Court: Read the item.

A. Item 25-46-A shown at page 10, Supplement No. 2, gasoline in tank cars, minimum weight as provided in item 298 of the southwestern lines, classification, exceptions and rules circular No. 1-F, F. A. Leland, I. C. C. No. 1026, are reissued from Kiefer, Oklahoma, to West Port Arthur, Texas, rate in cents per hundred pounds 33.

By the Court: Go ahead. Proceed with the witness.

[Q.] Referring to the items that names the rate on gasoline from Jenks to the same destination—

By the Court: Now did you ask him from Kiefer to West Port Arthur, and Port Arthur, was that your question before?

By Mr. Payne: Yes, sir.

By the Court: Are you sure of that.

By Mr. Payne: I amend my question accordingly.

By Mr. Swacker: Whatever the witness read the tariff shows I ask the question be disregarded.

By the Court: Read the tariff from Kiefer to Port Arthur and West Port Arthur.

A. May I ask what date.

By the Court: The tariff which from its filing mark and other identifications shows that it was on file with

the Interstate Commerce Commission on December 2, 1916.

By Mr. Swacker: I object to the witness testifying to his conclusions, what would constitute on file with the Commission.

By the Court: Well you can turn to the tariff that was on file with the Commission then.

By Mr. Swacker: I think it is irrelevant unless there is something to show it was in force at the time and it seems that he is now referring to another tariff. He has not shown participating carriers.

By the Court: Are you still in this same book you testified about as to participating carriers?

A. Yes, sir.

Q. Did you state the supplement number that the gasoline rates from Kiefer is shown at? A. Yes, sir.

Q. State the supplement number if it is in a supplement and the page of the supplement in which the gasoline rate from Jenks is shown to Port Arthur and West Port Arthur?

A. Supplement No. 3 at page 10, 1536-N.

Q. Go ahead read the item?

A. Oil, petroleum and its products including compound petroleum oils and greases listed under a head of petroleum and petroleum products and rated 5th class or lower in current western classification from following points in Oklahoma; Jenks to Port Arthur and West Port Arthur, rate 39 cents per on hundred pounds.

By Mr. Swacker: I object to that as irrelevant and immaterial, he has shown nothing about gasoline there.

Q. Did the item that you just read refer to another tariff or a list of articles on which that rate applies?

A. It did.

Q. Referring to the other tariff or classification whatever it is—but before doing that turn back to the title page of the tariff and state whether it is governed by the western classification? A. It is.

By Mr. Swacker: I object.

By the Court: State what the title page shows.

A. "Governed, except as otherwise provided herein by western classification No. 52 or reissues thereof."

Q. Now you may refer to the classification and read from the item which is referred to in the other tariff.

A. Western classification No. 54.

By the Court: Identify that tariff which you refer to have the stenographer to identify that Exhibit 37.



Q. Refer to that book—

By the Court: What book what exhibit?

Q. Pardon me, Government Exhibit 37 and read from the title page there? A. The western classification No. 54.

By Mr. Swacker: I object to that the tariff he read from before purported to be covered by the western classification No. 52 or the reissue thereof.

By the Court: What is he testifying to now the western classification No. 54?

A. This is a reissue.

By Mr. Swacker: I object to the witness testifying that is a reissue. That is a legal conclusion.

By the Court: Is that 52?

A. Yes, sir.

By the Court: Let him identify 52 as Exhibit 38.

By Mr. Payne: Also identify this as Government's Exhibit No. 39.

Q. Referring to Government's Exhibit No. 38 state what that title page shows it to be?

A. Western Classification No. 52 cancelling Western Classification No. 51 and supplements thereto. Western Classification No. 53 cancelling Western Classification No. 52. Western Classification No. 54 cancelling Western Classification No. 53.

Q. Now state what page you are going to read from.

A. At page 302, under the caption, "Petroleum, or Petroleum Products," is listed gasoline, it taking fifth class.

Q. Now take up the Drumright gasoline rate. Get your tariff and we will identify it.

A. Supplement 52 at page 17 of Government Exhibit 36, basis for rates to and from stations on the Atchison, Topeka and Santa Fe Railway to or from Drumright, to make rates to or from the following stations on the Atchison, Topeka and Santa Fe and the arbitrary specified below to all rates named in tariff, authorized to or from Cushing, Oklahoma, in connection with the Atchison, Topeka and Santa Fe Railway. Petroleum, oil and products, arbitrary in cents per one hundred pounds, one. At page 58 of the same supplement, oils, petroleum and all its products listed under heading of Petroleum and Petroleum Products, and rated fifth class in current western classification from the following points in Oklahoma; Cushing to Port Arthur and West Port Arthur, rate of thirty-nine cents per one hundred pounds will apply.

Mr. Swacker: Are these tariffs in evidence, if I understand correctly?

The Court: Yes, sir.

Q. Fix the date that they were in force by showing the previous tariffs to the subsequent tariffs.

Mr. Swacker: I object to the witness attempting to give his opinion. I have no objection to his reading from the tariff, but this conclusion is a wholly different thing.

The Court: You refer and show when the tariff was filed. Then show when any supplement was filed and then point out anything in that supplement that changes the rate, if there is anything in the supplement to change the rate, relative to gasoline.

A. Supplement No. 52, effective November 16, 1916.

The Court: Is that the first supplement that was filed after the tariff sheet was first filed that related to gasoline?

A. No, sir.

The Court: Go ahead, take this witness and guide him; let's get through with this.

Q. Refer to the tariff in force prior to the tariff that you referred to, read from the tariff shown by the previous tariff which it superseded and state the date of the tariff that you now have—refer to the previous tariff and state what the stamps on it shows in reference to the cancellation; then refer to the present tariff and state what the stamp on it shows with reference to cancellation.

Mr. Swacker: I object to the witness' conclusion as to what are previous and what are present tariffs.

The Court: He can state the facts, he can testify, he can refer to the tariff and say there is nothing in the sheet relative to gasoline, that is a fact.

Mr. Swacker: I am not objecting to any such testimony as that, I am objecting to his attempting to state his conclusion of what was a previous tariff and what was a present tariff.

Mr. Payne: It is not his conclusion, it is evidenced right on it, otherwise you could never tell.

The Court: You have got the tariff filed 1914?

A. Yes, sir.

The Court: Now would that tariff of 1914 cover the rate of the items in there covering the rate of gasoline from Kiefer and Drumright to Port Arthur?

A. Your honor, I. C. C. 1048 were filed with the commission—

The Court: As shown by the files?

A. Yes, sir, the filing date on the face of that date shows June 12, 1914, the face of the tariff also shows it was in effect on July 24th, 1914, Petroleum and Petroleum Products, in this tariff were in effect until the issuance—

The Court: You have read—you have read what they are, I believe you have read that.

Mr. Payne: Yes, sir.

The Court: Now then, turn to any supplement where there was any change made in there at all, any reference made to them.

Q. If there is any, if there was not you are permitted to state there was not.

The Court: I will permit him to testify, if it is a fact, that in none of the supplements is there any items relating to gasoline; he can testify to the fact, if that were a fact. Go ahead.

Q. In supplement 64, page 13, item 1536-R, petroleum oils and its products—

The Court: When was that supplement, what is the date of it? And endorsement on it?

A. It is filed on March 23, 1917.

The Court: Now, are there any supplements between then and when the original rate was filed that dealt with this?

A. The items which show the rates on gasoline and petroleum products were in practically every supplement in this tariff.

Q. As I understand, the question is whether there was any change in the rate.

My Payne: I might state for the benefit of the court, that when a supplement is issued, and then changing a rate or naming a rate, a later supplement, in a later supplement that first rate published in the first supplement is reissued.

Mr. Swacker: I object to that statement, it is inaccurate in the first place.

The Court: Now take the first supplement and then the next supplement, and if it is the same I will permit you to testify the items are the same.

A. I have gone through every one of those items from the time this tariff was issued to the close of it, and there has been no change made.

The Court: No change in the language?

A. No, sir, only they have added a station now and then.

Q. Station other than the three points of origin involved in this case? A. Precisely.

The Court: Go ahead and read what he asked you.

A. I am going to endeavor now to show where the rates on petroleum and petroleum products were cancelled on this tariff and go into another one.

The Court: Very well, read that. Now that is in the 1917 supplement?

Mr. Swacker: Will the witness kindly refer to the books by the exhibit numbers that have been marked on them, so we may know the reference?

A. Government's Exhibit No. 36, supplement 64.

Mr. Swacker: Of that exhibit or another exhibit?

A. Same exhibit, yes, sir.

A. At page 13, item 1536-R, Petroleum Oil and its products from points in Oklahoma to points in Texas, cancelled, see 136, page 23 of the same supplement, item 2546-E, gasoline in tank cars from Kiefer, Oklahoma, to Port Arthur and West Port Arthur, Texas, cancelled, see 136.

Mr. Swacker: Did you read the effective date of that?

A. Yes, I will read it. On the title page of the supplement 64 it reads. "Effective May 2, 1917." At page 7, "Explanation of characters," first column "Characters" 136. For rates, rules and regulations on petroleum and petroleum products from Oklahoma producing points, see Southwestern Lines' Tariff 79. F. A. Leland, I. C. C., No. 1186.

Q. Take up the rate from the three points I mention at the first date I mention and follow down to May 31, 1919.

A. We have now covered up to May 2nd, 1917, in I. C. C. No. 1048.

Q. Well take it on from that date?

By the Court: That is not his business to have those things attended to.

By Mr. Payne: I beg your pardon. Mark this Government Exhibit 40. I was going to state when the documents are voluminous the witness can state he made an examination—

By the Court: Go ahead.

A. Government's Exhibit 40 shows on its title page I. C. C. No. 1186, issued by F. A. Leland, Agent, St. Louis, Missouri, at page 3, participating carriers, names of carriers, Atchison,

Topeka & Santa Fe Railroad Company under power of attorney to F. A. Leland, Agent, No. F-1, No. 33, at page 34, Gulf, Colorado & Santa Fe Railroad F. X. 1 No. 39.

Q. Just a minute, I want to hand the witness a line as to the Gulf, Colorado & Santa Fe Railroad lines.

By the Court: Go ahead you have not got time to write that

A. Kansas City Southern Railroad F. X. 1, No. 24, The Texarkana and Fort Smith Railroad, F. X. 1, No. 20, The St. Louis and San Francisco Railroad F. X. 1, No. 137. St. Louis and San Francisco of Texas.

By the Court: No, cut that out, Midland Valley next.

A. Midland Valley Railroad, F. X. 1, No. 18. At page 78 item 425 Miscellaneous Rates, commodities, gasoline in tank cars from Kiefer, Oklahoma, to Port Arthur and West Port Arthur, Texas, rate in cents per hundred pounds 33. Page 10, Oklahoma, producing point, Jenks, group location, A. Drum-right, group location, Jennings, rate plus, one cents per one hundred pounds. Page 10 of group A.

By Mr. Swacker: Is there any limitation on that Jennings routing.

A. No, sir, nothing about routing?

By Mr. Swacker: Limited to the Missouri, Kansas & Texas Railroad.

By Mr. Payne: I object he cannot state a conclusion for you any more than for me.

By the Court: Go ahead.

A. Page 42 petroleum and its products as described in item No. 5, or reissues from group A to Port Arthur, Texas, rates in cents per one hundred pounds 39, page 15, item 5 where reference to this item the rates apply on petroleum oil and its products listed under head of petroleum and petroleum products rated fifth class or lower in current western classification. That is Government's No. 37, your honor, Government's Exhibit No. 37, No. 41 on its title page reads I. C. C. No. 1219, cancels I. C. C. 1186, issued by F. A. Leland—

By Mr. Payne: Just a moment I offer in evidence—

By the Court: That is already identified. All these sheets marked as exhibits are in evidence, let the record there show that.

A. Issued by F. A. Leland, agent, St. Louis, Missouri. At page 3—

Q. Are you stating the dates shown, the date indicated by the tariff as the effective date?

A. I don't recall whether I stated the effective date on I. C. C. 1186. May I state I. C. C. 1186, was effective May 2, 1917?

Q. State what the tariff shows as the effective date.

A. On the title page I. C. C. 1186 the effective date rates effective May 2, 1917, the title page of Government's Exhibit No. 41 shows the effective—

By the Court: Reads—

A. Reads—effective April 22, 1917.

By Mr. Swacker: I desire to make an objection to so much of the preceding tariffs as are offered in evidence subsequent to December 28th, 1917, as being irrelevant it being a matter of judicial knowledge that participating carriers heretofore shown as being carriers therein, ceased to be carriers on that date, by the taking of the railroads over by the President of the United States on that date, it not being shown that the director general of railroads filed as required by law and the rules and regulations of the Interstate Commerce Commission an adoption of the existing tariffs on that date.

By Mr. Payne: The indictment alleges count 86 which happens to be one of the counts that covers the period during the government control that prior to December 28, 1917, the railroad companies named here were common carriers and were engaged in interstate commerce and were subject to the acts regulating commerce subject to the statutes and that on December 28th, 1917, the United States of America, the President of the United States of America, did by his proclamation, dated December 26th, 1917, assume control of a certain system of railroad transportation, including the railroad route and lines of the three common carriers aforesaid and—

By the Court: Now if he makes a point there is no evidence here of these tariffs that the director general ever concurred in them for the purpose—

By Mr. Payne: The indictment alleges that throughout the period of time alleged in this count that the three common carriers mentioned under the federal control as previously described had printed and had filed with the Interstate Commerce Commission their rates and schedules.

Mr. Payne: Now I know as a matter of fact the Director General did later make himself a party to all such tariffs, to all tariffs.

Mr. Swacker: I object to these statements, there is a proper mode of proving this.

The Court: That is all right, he is permitted to state that for the benefit of the court. Very well, I will permit you to get certified copies of that and file them later. You can telegraph to Washington and get them later.

Mr. Payne: These tariffs show the Director General of the United States has issued them and published them.

The Court: Turn to it then.

Mr. Swacker: My objection was that the tariff preceding that, as to so much of it as admitted in evidence as purporting to show the rates governing the Director General after December 28, 1917. The tariff the witness is looking at now, that he read an excerpt from, as indicated, had cancelled that preceding tariff.

The Court: What is the date that went into effect?

A. I think Mr. Swacker refers to 1186, I. C. C. number, which remains in force.

Mr. Swacker: Don't state it remains in force, state what it says, on its face only.

A. Government's Exhibit No. 40 reads on its face "Effective May 2, 1917."

The Court: Now, what is your objection as to that?

Mr. Swacker: That so much of that as is purported to be evidence of the rate after December 28, 1917, shows no adoption by the Director General, or participation or concurrence by him in the manner and form required by the Act to regulate commerce and the regulations of the Commission thereunder.

The Court: They show for themselves.

Mr. Swacker: Yes, sir.

The Court: That is for you to show the jury.

Mr. Swacker: Very well. I just objected to the relevancy.

The Court: Whatever they show they show for themselves. They are there; this for the benefit of bringing the pertinent parts directly to the jury. That is what that is in here for. Go ahead.

Mr. Swacker: May we have an exception, or does the court exclude the evidence as to the consideration of that tariff?

The Court: These tariffs are in here; they show when they are filed and what is on them. They are in evi-



dence and if they were not effective at that time it shows for itself and I will permit you all to show that by evidence that that is a fact.

Mr. Payne: I might state for the benefit of the court, if he will permit me, that there was a short time——

The Court: I don't care anything about that, the evidence shows that. Go ahead.

A. Government's Exhibit No. 41 reads on its title page, "I. C. C. 1219, Cancels I. C. C. 1186, issued by F. A. Leland, Agent, St. Louis, Missouri." Page 3, participating carriers, names of carriers——

Mr. Payne: Will you raise your voice a little, I don't believe the jury gets what is going on; just speak up a little louder.

A. Names of Carriers. Atchison, Topeka and Santa Fe Railway Company, under Powers of Attorney to F. A. Leland, Agent, F. X. form No. 133. At page 4, Gulf, Colorado and Santa Fe Railway Company, F. X. 1-39. At page 7, St. Louis-San Francisco Railroad Company, F. X. 1-137.

A. (Continued) At page 5, Midland Valley Railroad Company, F. X. 1 No. 18; same page, Kansas City Southern Railroad Company, F. X. 1 No. 24; page 7, the Texarkana and Fort Smith Railroad Company, F. X. 1, No. 20.

Mr. Swacker: I object to his testifying to that exhibit on the ground of its being irrelevant, incompetent and immaterial, it not being shown an agency on behalf of the Director General, or any concurrence on his behalf.

Mr. Payne: There may be no evidence of it, but the course of the business will show that there was an adoption.

The Court: What does it show there as to the Director General?

A. Nothing in the original tariff, your honor.

The Court: Any supplement anywhere?

A. Yes, sir.

Q. Read it.

A. Supplement 4, title page, "The rates made effective by this schedule are initiated by the President of the United States, through the Director General, United States Railroad Administration, and applied to interstate traffic only. This schedule is published and filed on one day's notice with the Interstate Commerce Commission, under General Order No. 28 of the Director General, United States Railroad Administration, dated May 25, 1918, and amended June 12th, 1918."

Mr. Swacker: Read the effective date of that supplement.

The Court: Read the effective date.

A. Effective June 25, 1918.

Mr. Swacker: Now I ask, if your honor please, to have excluded from the evidence all of these tariffs purporting to cover, or name rates previous to the date last *intention* by the witness, as the date of their adoption by the Director General of the United States.

The Court: They show for themselves, they show when they are in effect. When I come to instruct the jury you call my attention to those matters and I will instruct the jury accordingly. Now is not the time.

Mr. Swacker: I am just objecting on the ground of irrelevancy and its immateriality.

The Court: Well, they are the rate sheets and you cannot exclude one part of this rate sheet without the other. That is a matter to be covered by instructions to the jury. At the proper time bring that to my attention and I will do that.

Mr. Swacker: May I have an exception to their going in evidence?

The Court: I don't pass on it now, I withhold the ruling of the court.

A. At page 79, item 660, gasoline in tank cars from Oklahoma points, Kiefer to Port Arthur, Texas, and West Port Arthur, Texas, rate in cents per one hundred pounds, thirty-three cents.

Mr. Swacker: May I ask what date the witness is reading?

The Court: What date you are reading now?

A. The title page reads, Effective April 27, 1918.

Mr. Swacker: I desire to object to his testifying as to contents of items from the tariff preceding the supplement adopting the tariff by the Director General as being incompetent, irrelevant and immaterial.

The Court: Now, does that show the Director General adopted that tariff?

A. June 25, 1918. I would say it shows the adoption on that date.

Mr. Payne: Well, that shows it was a form issued by the railroad and after that date the Director General adopted it.

The Court: I will permit that only to apply after the date the Director General filed his consent.

Q. Take up the next one after the Director General had given his consent. Now to save time and save objection, omit any tariff there that is not—until such time as the Director General became a party to the tariff.

A. May I state here, it will be impossible to read a rate from this tariff from that date, without referring back to the original tariff.

The Court: Well, that is all right.

Mr. Swacker: I would like to make objection to his referring to the original tariff, on the ground of the failure of any showing that the Director General adopted any tariff. There is a means by which it may be adopted, but there is no evidence that the Director General ever adopted those tariffs.

Mr. Payne: I think the court might take judicial notice of the fact that shortly after the railroads were taken over, and before all tariffs could be arranged, that the Director General did operate the railroads and did comply with the law which was still in force, which required him to collect those rates and observe those tariffs, he simply put himself in the place of the railroads.

By the Court: Well now where is the law for that? Where is the proclamation that does that?

By Mr. Payne: My best recollection is—

By the Court: We are not going on the basis of your recollection, look that up.

By Mr. Payne: I was going to suggest I could get the proclamation whatever it was.

Q. Well now give us your next—

By the Court: What was the supplement you found?

A. The first supplement, Supplement No. 5, No. 4 which made the general increase of 25 per cent with some exceptions, general increase of rates.

By the Court: Read the supplement—where it operates as an adoption—the tariff sheets are considered just like any other evidence.

A. I have read from the title page.

By the Court: Read it again.

A. Rates made effective by this schedule are initiated by the President of the United States through the Director General, United States Railroad Administration, and apply to interstate traffic only.

By the Court: Let's see that.

By Mr. Swacker: There is a manner and form provided by law for the adoption of the tariff. There is no evidence of that.

By the Court: I will get to that the rate is made effective by this schedule, or what schedule are you talking about?

A. This schedule here.

By the Court: Let's see what the schedule says. Does that schedule refer back to these other rates?

A. Yes, sir.

By the Court: Now read where it does that, are they enumerated here?

A. Yes, sir.

By the Court: Very well, I will overrule the objection.

By Mr. Swacker: I except.

Q. Take up the next, Mr. Topping.

A. At page 11, Oklahoma, producing point, Jenks, group location A.

By the Court: This is between December 28th, the time—

A. This is prior.

By the Court: You need not read as to that. You may state what that schedule shows I will cover that by an instruction to the jury. Now I am going to instruct the jury unless you show me something to the contrary that between December 28th and the time that that supplement became effective that there was no legal rate to make it any crime for violating it after December 28th and up to the time this supplement became effective.

By Mr. Payne: Unless we show you some authorities?

By the Court: Yes.

A. Shall I proceed?

By the Court: Yes.

A. At page 10, Oklahoma producing points, Drum-right—

Q. Pardon me, did you state the exhibit that you were reading from? A. Exhibit 41.

Q. Go ahead, answer?

A. Group location, Cushing, rate plus one cent per one

hundred pounds. At page 42 petroleum and its products as described in Item No. 5 on reissue to Texas Points from Group A. rates in cents per one hundred pounds Port Arthur, 39 cents. The same heading on page 43 to West Port Arthur, 39 cents.

By Mr. Swacker: It appears that all the items read by the witness from this Exhibit are read from that portion of the exhibit preceding the date of the supplement filed by the Director General.

A. Yes, sir.

By Mr. Swacker: May we have an objection as incompetent, irrelevant and immaterial.

By the Court: Very well.

By Mr. Swacker: Exception.

A. At page 17 item 5 where reference is made to this item the rates apply on petroleum oil and its products listed under the head of petroleum and petroleum products and rated fifth class current western classification.

By Mr. Swacker: May we make the same objection to that also.

By the Court: Yes, you may have your exception.

By Mr. Payne: I offer Government's Exhibit 42 in evidence your Honor after he identifies it.

By the Court: It may be considered in.

By Mr. Swacker: We object to the witness reading anything from Government's Exhibit 42 as the application sought to be given it comes from the body of the exhibit last read from which was received subject to objection.

By the Court: Very well.

By Mr. Swacker: Exception.

A. Exhibit No. 42 on the title page reads western classification No. 55 at page 339 under the classification under the caption "petroleum or petroleum products," it reads "Gasoline." Exhibit No. 41, supplement 4, page 2,—

By Mr. Swacker: Will the witness read the effective dates shown on these because we have no way of knowing.

A. This was read—I omitted the first page to save time. Effective June 25th.

By Mr. Swacker: Have you read that one before?

A. Yes, sir.

By Mr. Payne: Don't repeat anything on the suggestion of the other side. You go ahead.

By the Court: Oh yes.

By Mr. Payne: The Court will give you your instruction.

A. Supplement No. 4 this covers Exhibit 41 reading on its title page effective June 25th, 1918. At page 7 the rates are raised in tariff supplement hereby numbered the increase by this supplement applying to the entire rate listed below whether such rates are published as statistic, orders are made up of use of differentials or arbitrary—I. C. C. No. 1219. At page 2 application of rates effective June 25th, 1918, all rates then in effect named in tariff are enumerated herein and in prior supplements thereto as indicated to each of which tariffs this is a special supplement or increasing those rates shown in column D table of rates on page 46 inclusive hereof except as otherwise provided and the exception to the table of rates on page 7 hereof.

By the Court: How much do you lack of being through?

A. Oh, over a half hour.

By Mr. Swacker: I would like to object to the admission of the last matter mentioned by the witness as being incompetent, irrelevant and immaterial and not connected up with the other tariff nor any adoption of the other tariffs by the Director General having been shown.

By the Court: Overruled and exception noted. The witness will be excused until nine o'clock in the morning. The jury will be permitted to go now under the usual instructions heretofore given them and until nine o'clock in the morning. Remember the hour, nine o'clock in the morning. Court will now take a recess until nine o'clock in the morning.

(Whereupon Court adjourned until nine o'clock tomorrow morning.)

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#### MORNING SESSION.

April 15th, 1920.

(Whereupon, Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the Jury having been called by the Clerk and all found to be

present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following proceedings were had and the following evidence offered and introduced, to-wit:)

By Mr. Diggs: If the Court please if you will give me three or four minutes I think we can save three or four days' time in this case. If the court please as to the character of evidence the shipments of the Texas Company sought to be introduced yesterday under certain conditions we think that evidence is immaterial but as we understand the rule in order to be able to move to exclude that evidence after the close of the Government's case we must save exceptions to it as we go along or make an objection to it reserving the right to strike at the conclusion of the Government's case unless the other facts have been shown to make it relevant and material so to cover that feature of the case I have prepared an admission that we are willing to make with respect to count 36 and 81 of the indictment. (Reading): It is admitted by the defendant that the Texas Company shipped to itself at Port Arthur, Texas, over the routes of the Midland Valley Railroad, the Kansas City Southern, and Texarkana & Fort Smith Railway upon the dates, in the cars, the quantities in each such counts alleged, casinghead gasoline blended about one-third naphtha described in the shipping orders as gasoline and paid the charges for the transportation thereof from Kiefer, and Jenks, Oklahoma, computed at the rates respectively, 33 cents and 39 cents per each hundred pounds and that the commodity shipped from Kiefer was produced by Crosby and Gillespie Company and that from Jenks by the Totem Gasoline Company, this admission is made subject, however, to the right to move to strike it and have it stricken from the record in the event the Government does not prove by additional evidence facts sufficient to make this evidence relevant and material.

The Court: What do you say about that?

Mr. Chambers: I don't know what he means by that last proposition.

The Court: They admit that for the purpose of the record subject to their right to strike it out on the ground of relevancy and incompetency.

Mr. Diggs: After the Government closes its case, if the Court thinks it is relevant and material, it stands; if the Court doesn't think so, it is stricken. And I want



to add to the record that the admission is made for the purpose of this trial only.

The Court: Yes.

Mr. Payne: There could certainly be no objection to that. If there is any further evidence, we will have to put it in, in addition to the admission. May it please the Court, in reference to the rates, the witness Topping has so far covered only the rate on gasoline from the three points of origin in question to Port Arthur from the beginning of the period mentioned in the indictment up to June, 1918. He must go yet over a long period as to the gasoline rate, and then we propose to show the rate in effect on liquefied petroleum gas and naphtha. For that reason that beginning, or effective September 1, 1918, as we contend, the classification contained a rule that a blend of casinghead gasoline with naphtha must be described and shipped as gasoline, casinghead gasoline or casinghead naphtha.

The Court: When was that?

Mr. Payne: Now, the tariffs don't specifically mention naphtha—casinghead naphtha or casinghead gasoline; but we propose to show that in addition to the rate on gasoline, that there is a rate on liquefied petroleum gas which is casinghead gasoline when the vapor tension is above ten pounds, and that the rate on the mixture, rate on naphtha or gasoline or liquefied petroleum gas are all the same. That is, the same rate applies to all. In other words, whether it is described as gasoline, casinghead gasoline or casinghead naphtha.

The Court: You mean the same rate applies to all.

Mr. Payne: Yes, sir, I believe to all. Now, I propose this morning to re-offer the rate certificate, subject to Mr. Swacker's objection that the Interstate Commerce Commission can not certify how long the rates were in force, and then put in the rest of the tariffs without having them read from and then the construction of the tariff will be up to the Court, and the Court can call expert witnesses on either side to—in other words, there can be no dispute between counsel as to what the tariffs show.

Mr. Swacker: I think the proper way to determine the rate is by reference to the tariff and the Court instruct the jury, as a matter of law, what the rates are after the Court has read the tariff. The Court might advise himself by consultation with Mr. Topping, or anybody else that he wants to, but I want to correct the statement made by

Mr. Payne concerning the description of casinghead naphtha, casinghead gasoline and gasoline, which he says became effective in the classification September 1st, 1918, that is merely the rule governing the description required to be shown in the interest of safety, one of the safe transportation rules of the classification so described, and then the description of liquefied petroleum gas in those rules is limited to casinghead gas, condensed with a vapor tension exceeding ten pounds per square inch—

Mr. Payne: That is a question of argument. We contend that they are. He contends that they are not.

The Court: I will permit you to introduce the records and then I will hear argument on that.

Mr. Swacker: And there is one other part I want to reserve an objection to the consideration of rates now on liquefied petroleum gas or naphtha or other petroleum products; for the reason the indictment charges us with shipping gasoline and alleges rates on gasoline, and if it were a fact it might be shown there was another rate applicable, that would be absolutely inadmissible in this case.

Mr. Payne: All we can show is the rate on the commodity that was shipped.

Mr. Swacker: We dispute there was any other rate applicable.

Mr. Payne: That is a matter of argument.

The Court: What is the allegation in the indictment?

Mr. Payne: The allegation is that the defendant shipped gasoline.

Mr. Swacker: And that the rate was on gasoline, that is all I am making this objection; under the rule it would be the same as if they charged us with stealing a white horse and wanted to now prove we stole a black horse and get a conviction on that.

Mr. Payne: I know, but if we allege the gasoline rate on a certain product, gasoline product was 33 cents.

The Court: Turn to the terms of the allegations of the indictment.

Mr. Swacker: They are the "rates and charges for the transportation of certain products, to-wit, gasoline, in tank cars," and this tariff shows said rate to be 33 cents for each 100 pounds thereof. They charge that we shipped on certain dates while this tariff was in force and effect, to-wit, certain products, 8,049 gallons of gasoline. We contend that was undefined naphtha. We will concede

on that point, as a matter of law, it has been held under the Elkins Act you might require in a bill of particulars—that it is not necessary to be alleged, but it might be alleged under the Elkins Act, on a charge that we shipped gasoline, the rate on gasoline being a certain rate, and got a concession on it, and prove that you did it by some device. When it was something else, shipped, you certainly could not deviate from the fact you shipped something else, because the rate might be on gasoline and on the other product the same thing, and thereby prove it. Therefore, we object to any evidence relating to rates on anything other than gasoline and unrefined naphtha.

By Mr. Payne: The position of the Government is that these shipments were gasoline as alleged in the indictment and that the rate on gasoline applies. Now we have the rule of classification, the rule 44 of the classification which says that casinghead gasoline blended with naphtha must be shipped as gasoline, casinghead gasoline or casinghead naphtha. Now our contention is that it is gasoline. That those three things however, are by the rule itself different ways of describing the same thing in that—

By the Court: Very well I will let you put in in. It seems to me like it ought to be put in the record that this is for the benefit of the Court because if either side wants to go up it would be in the record.

By Mr. Swacker: I don't know whether your Honor understands that this rule 44 Mr. Payne has just referred to is the transportation rule.

By the Court: Who is it made by?

By Mr. Swacker: By the Interstate Commerce Commission upon the suggestion of the bureau of explosives.

By the Court: Well now wouldn't that be permissible on the question of intent, that goes to the good faith of the parties making the shipment.

By Mr. Swacker: Highly so, we will contend strongly the point that we complied with it and there was no deception but I am arguing there could be no proper evidence of the rate on the other products on the theory which the Government seem to be taking—that is if it is not gasoline it is liquefied gas and if it is not liquefied petroleum gas it is liquefied petroleum gas and the products produced, and if it is not that it is naphtha.

By Mr. Payne: No we have not contended that at all.

By Mr. Swacker: Just a moment.

By Mr. Payne: We have not contended that.

By Mr. Swacker: Just a moment.

By the Court: Let me ask you a question. Now what is the object, what would be the relevancy of showing a rate on liquefied naphtha.

By Mr. Payne: It is a matter of evidence in the case and a circumstance.

By the Court: Where would be the relevancy and the circumstance?

By Mr. Payne: To rebut the reasonableness of their contentions our evidence would show when it became liquefied as a vapor tension of ten pounds at most shipped as liquefied petroleum gas which takes the rate the same as gasoline and if those vapor tensions weathered down to ten or below which it might do in a day's time then according to their contention the same car might be shipped for one half of what it would the day before.

By the Court: That may become competent later on.

By Mr. Payne: We want to put in the rate.

By the Court: I will let you introduce these records and if it become necessary I will let you bring in the witness. That might become competent but it is not now, I would not permit it now, but I am inclined to think it might under certain circumstances become competent later on.

By Mr. Swacker: Your Honor understands there is no pretense we have shipped anything over ten pounds and the tariff will be in evidence and your Honor will instruct the jury as to what the rates are.

By the Court: You ought to get the expert here so I can—

By Mr. Payne: Yes, sir, sir, in order to keep the record straight I wish to re-offer Government's Exhibits 16, 17, 18, 19 and 20.

By the Court: They are admitted in so far as they set out the rates.

By Mr. Swacker: In so far only as each of them purport to be an excerpt of the tariff.

By the Court: And the recital there shown.

By Mr. Payne: Everything in these certificates except the title sheet are simply copies from the tariff.

By Mr. Swacker: No I beg your pardon there is on each sheet an excerpt and then there is a preface and the

preface is what we object to and I understand under the Court's ruling that is a conclusion.

Mr. Swacker: This part is the actual extract. This is a statement that it is an extract.

The Court: That is the extract.

Mr. Payne: I propose to put in the tariff schedules themselves.

The Court: I will admit the parts all except this and then introduce all the tariffs.

Mr. Swacker: The certificate on its face, we also object to the last recital about when they were in force.

The Court: Yes, that will not be admitted.

Mr. Swacker: And the tariffs are to be regarded as in evidence.

The Court: All of these tariffs. They only apply to matters of relevancy.

Mr. Swacker: Those are to be determined by the court later.

The Court: They will be presented to the jury on direction of the Court.

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Whereupon A. A. TOPPING, the witness on the stand at adjournment yesterday afternoon, was called to the stand and examination resumed.

*Direct Examination Continued by Mr. Payne.*

Q. You are the same Mr. Topping that was on the stand yesterday in this case? A. Yes, sir.

(Whereupon Mr. Payne asked the Reporter to mark certain papers exhibits, and they were marked Exhibits 45, 46, 47, 48, 49, 50 and 51.)

Q. I show you Government's Exhibit 47, and ask you to identify it.

A. Government's Exhibit 47 is tariff issued by F. A. Leland, Agent, under I. C. C. No. 999.

Q. I show you Government's Exhibit 45 and ask you to identify that.

A. Government's Exhibit 45 is a schedule issued by F. A. Leland, Agent, St. Louis, Missouri, under I. C. C. No. 1137.

Q. Schedule or tariff?

A. That is not a tariff, it is exceptions and rules and regulations to the Western Classification.

Q. I show you Government's Exhibit number 46, and ask you to identify it.

A. That is a schedule issued by F. A. Leland, Agent, St. Louis, Missouri, under I. C. C. No. 1244.

Q. I show you Government's Exhibit number 48, and ask you to identify that.

A. Government's Exhibit number 48 is the Western Classification number 50.

Q. I show you Government's Exhibit number 49, and ask you to identify it.

A. 49 is the Western Classification number 51.

Q. I show you Government's Exhibit number 50, and ask you to identify that.

A. Number 50 is the Western Classification number 55.

Q. Government's Exhibit number 51, and ask you to identify that.

A. Exhibit number 51 is a tariff issued by F. A. Leland, Agent, St. Louis, Missouri, under I. C. C. number 889.

Q. I show you Government's Exhibit number 52, and ask you to identify that.

A. Number 52 is a tank gauge book showing the classes of tank cars used in the transportation of liquid freight issued by E. B. Boyd, Agent, Chicago, under I. C. C. number A-722.

Q. Mr. Topping did you get that schedule from the official tariff files of the Interstate Commerce Commission?

A. It came from the files of the Interstate Commerce Commission, Washington, D. C.

By Mr. Payne: I am offering these.

By Mr. Swacker: Are you qualifying that answer as different from Mr. Payne's suggestion? He asked you if it came from the official tariff files and you answered that it came from the files.

A. Oh, the official files, we have nothing but the official files in Washington.

By Mr. Payne: That certificate will show the shell capacity of the tank cars.

By the Court: Introduce it and bring it up afterwards.

Q. Government's Exhibit No. 53——

A. Government's Exhibit No. 53 is also tank gauge book, issued by E. B. Boyd, agent Chicago under I. C. C. A-785.

Q. Show you Government's Exhibit No. 54, identify that please?

A. Government's Exhibit 54 is tank gauge book issued by E. B. Boyd, agent, Chicago, under I. C. C. A-826.

Q. Here is Exhibit of the Government, 55, identify that please?

A. That is a tank guage book issued by E. B. Boyd, agent, Chicago, under I. C. C. A-906.

By the Court: Mr. George Anderson, who was a witness yesterday, any objection to his being excused?

By Mr. Swacker: No, sir.

By Mr. Payne: Mark it Government's Exhibit No. 56.

Q. I show you exhibit 56 and ask you to identify that?

A. Government's Exhibit No. 56—tariff issued by F. A. Leland, agent, St. Louis, Missouri, under I. C. C. number 1253.

By Mr. Payne: That is all Mr. Topping. Your Honor, I would like to check these up and ask permission to recall Mr. Topping if necessary, later.

By the Court: Alright.

By Mr. Swacker: May I make a suggestion. It may be better to leave *these* marked for identification rather than considered in evidence so we can keep the record straight direct later on what is admissible so as to determine——

By the Court: I will show the records are introduced now but I will direct the jury's attention to part that I consider proper later.

By Mr. Payne: They are in evidence, then, all these exhibits that Mr. Topping testified to.

By the Court: Yes, sir.

*Cross Examination by Mr. Swacker.*

Q. Mr. Topping, will you look at Exhibit number 40, and find the item Drumright which you read from yesterday?

A. At page 9, yes, sir.

Q. Did you read all of the mater there relative to routing?

A. No, I read this, I read under group number, Jennings rate, plus one cent per one hundred pounds.

Q. Are there some notes there? A. Yes, sir.

Q. You didn't read those notes? A. No, sir.

Q. Will you read them?

A. Well, rates from Drumright, Fry, Oilton, Pameta——

Q. Read only so far as Drumright is concerned.

A. Rates from Drumright to apply via Cushing, Oklahoma and the A. T. & S. F. Railway only.

Q. Now, will you read the other notes, so far as it relates to routing.



A. Let's see. Note 7, I will read it. It doesn't apply to routing, I don't think it does. Note 7, basis shown herein for points making reference hereto will not apply in reference to the distance rate shown in item number 590 on re-issues.

Q. Now, will you look at the Jennings item referred to there, upon which the rate was based?

A. Now, for rates from Jennings, I find that Jennings is shown as being located on the A. T. & S. F., the M. K. & T., the St. L. S. F. in group location A.

Q. And do you find any limitation on routing on the rate from Jennings to be used in constructing this rate?

A. Yes, turning back to Drumright it states that the Jennings M. K. & T rate plus one cent.

Q. What are the exact words?

A. Jennings, M. K. & T. Railroad plus one cent per hundred pounds.

Q. Well, as a matter of tariff construction, not a matter of testimony, do you contend that you would construe that tariff via the A. T. & S. F.?

A. Most assuredly.

Q. That would apply via the Santa Fe? A. Oh, yes.

Q. Now, Jennings is routed via M. K. & T.?

A. It doesn't say that. This is the basis for making a rate from Drumright and whatever rates by the M. K. & T. you add one cent to make it applicable on the Atchison, Topeka and Santa Fe.

Q. That would be your way of construing it?

A. That is what the tariff says.

Q. Did you get out these tariffs from the files?

A. I did, personally.

Q. Are all those tariffs introduced in evidence necessary, in your judgment, in order to ascertain what the rates are involved in this case?

Mr. Payne: I object. Not proper cross examination! We have only put in the rate and what his judgment might be—

By the Court: I will let you make him your witness.

By Mr. Swacker: Alright.

Q. You say Mr. Topping is it necessary in your judgment as a tariff expert to use all these all these tariffs that have been introduced in order to ascertain the rates involved in this proceedings?

By Mr. Payne: I object as calling for a legal conclusion.

By Mr. Swacker: I am asking his opinion.

By the Court: I will see, I will let him answer and I will see.

A. Oh, what rates do you refer to?

Q. The rates covering the transportation of gasoline and unrefined naphtha between the period of December 2nd, 1916, and March 12th, 1919, between Keifer, Jenks, and Drumright, Oklahoma, and Port Arthur, or West Port Arthur, Texas?

By Mr. Payne: I object because this can have no possible relevancy to the case and I think he is going to try to show the shipper did not know what the rates were and he could not comply with them.

By the Court: You mean the shipper did not know what the rates were?

By Mr. Payne: Yes, sir. But the shippers are charged with the knowledge of the rates and of course the traffic manager would know——

By the Court: What is the purpose of this?

By Mr. Swacker: It is competent to show the quantity and material and labor and quantity of work a man would have to go through.

By the Court: I will sustain the objection at the present time, I can see that that might be permissible when the defense arose.

By Mr. Green: Note our exceptions.

By Mr. Swacker: We think it is admissible on the theory of showing absence of intent.

By the Court: I will permit you to recall him at the proper time.

By Mr. Swacker: I will limit myself then to the recross examination of the witness.

By the Court: Alright.

Q. Each of the places you have marked in those tariffs is a reference involved in this matter is it?

A. Not necessarily, most of them are. They are merely for help, that is all.

Q. Do you know if the Interstate Commerce Commission has issued and promulgated the rules and regulations governing the construction and filing of freight tariffs and classifications under the provisions of section 6 of the Interstate Commerce Act? A. I do, yes, sir.

Q. I hand pamphlet marked Tariff circular 18-A and ask you if that is the rules and regulations so issued by the commission? A. That is.

Q. And I will ask you to look at Supplement No. 4 and say

if that tariff circular together with that supplement are the rules and regulations in force since the date shown on them and still in force.

A. I know that 18-A is still in force. I would not say that supplement contains all the amendments. I have a complete copy with me. The circular is still in force, however.

Q. What is your best recollection of any supplement subsequent to supplement 4?

By Mr. Payne: I object just for the purpose of recording my objection to his proving things in a way he will not allow me to prove them.

By the Court: Yes, I sustain the objection.

By Mr. Payne: The best evidence is the certified copy from the Interstate Commerce Commission. I have no objection in the world to that going in evidence but you have put us to a lot of trouble to prove things in a legal way you try to prove them in a different way.

By Mr. Swacker: I am going to ask for an exception to a statement like that in the presence of the jury. We think we are entitled to preserve our right and save an exception to such comments.

By Mr. Payne: Your Honor, I will stipulate that is a tariff circular of the Commission, but he ought to prove it in a legal way and I object and ask that he prove it in a legal way.

By Mr. Swacker: Very well if he stipulates it I will offer it in evidence as Defendant's Exhibit No. 57.

By Mr. Payne: No, I didn't stipulate it, I said I would.

By Mr. Swacker: Well will you?

By Mr. Payne: I stipulate that that is a tariff circular issued by the Interstate Commerce Commission.

By Mr. Swacker: And that Supplement four is the last supplement?

By Mr. Payne: I do not know about that.

By Mr. Swacker: Will you have Mr. Topping look up his files and see if you have any objection to that?

Q. Mr. Topping, will you look at Supplement number 3, and read that rule 9-J?

Mr. Swacker: I don't know as we need to take up time, as that will be addressed in argument to the Court. Just read that for your own information, so I may ask you another question in reference to it.

A. I am.

Q. You are familiar with that rule, are you?

A. I am fairly so, yes. I wish I were more so. I have read it many times.

Q. Did you find in the files of the Commission any supplement, such as provided for by that rule filed by the Director General of Railroads of the United States adopting any of these tariffs?

The Court: Did you look for them?

A. Why, no your Honor, brought the supplements to these tariffs with me. Now the Director General——

Q. Just a minute. Did you bring all of the supplements to each of these tariffs?

A. With the exception of 1048. I brought the last supplement I. C. C. 1048, I don't recall what exhibit that is.

The Court: Why can't you find what is up there and stipulate?

Mr. Swacker: I don't think it exists.

The Court: Well, if it don't exist, you can find out and stipulate that.

Mr. Payne: I am willing to stipulate anything in the world that these tariffs show.

Q. Is there any such supplement as that provided by rule 9-J in so far as respect to these tariffs,——

Mr. Payne: I object, your Honor please, I think it is a matter of common knowledge. The Court will take judicial knowledge that the Director General took over the railroads and operated them, and he is trying to show for a period of three or four months, or five months, there was no fixed rate.

The Court: That is a question of law if they did not file anything else when they made the Proclamation and the Act of Congress that will become a question of law.

Mr. Swacker: What I am trying to do is to find out whether there is any such supplement as that,——

The Court: The facts, if they exist, that ought to be admitted.

Mr. Payne: He adopted those tariffs, I understand they have wired for the adoption, which will be here in a few days, and I now request, I make the request that in case the certificate which we wired for does not arrive on time, that we be allowed to put that in evidence before we have rested.

The Court: I will permit that. But I say, whatever

the facts are, they ought to be stipulated when you find out just exactly what was done, and then it becomes a question of law.

Mr. Swacker: Yes, but my contention is that this is the only lawful way to do it,—

The Court: That will be a question for the Court to pass on.

Mr. Swacker: But it is necessary for me to make my argument, to establish by this witness that there is no such supplement.

The Court: He will be kept here as a witness, and if they get the record here, after they get the record here, I will let you recall him for that purpose; that is, for cross examination, and he may be recalled for that purpose. Let me suggest, when you get those rates or reports, that you stipulate with them just exactly what the facts are.

Mr. Payne: Your Honor, I am quite willing to stipulate any fact that is a fact. That is all Mr. Topping.

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By the Court: Now we have made progress here in an hour and ten minutes than we made in two days. Call your next witness. Now I will put in the record that admission in this case apply only to this case. Only apply to this trial in this case unless it is otherwise specified in the stipulation. Get your witness in here.

By Mr. Chambers: I called for two of them and they are not here.

By the Court: You must tell them that they must stay here. Now let one of the bailiffs go out there and tell those witnesses that they must stay here or they will get an attachment issued for them. You had better get in touch with your witnesses and keep them here.

By Mr. Chambers: I don't know why they are not here, I suppose they would be here.

Whereupon, JOHN F. HAIGH, called as a witness on behalf of the United States, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. Haigh by Mr. Chambers.*

Q. Please state your name to the court and jury?

A. J. F. Haigh.

Q. Where do you live Mr. Haigh? A. Jenks.

Q. Jenks, Oklahoma. A. Yes, sir.

Q. And what is your business?

A. Superintendent of a casinghead gasoline plant.

Q. What is the name of the casinghead gasoline plant of which you are Superintendent? A. The Ajax Gasoline Plant.

Q. Located at Jenks? A. Yes, sir.

Q. How long have you been connected with that institution?

A. I have been superintendent for about twenty months?

Q. You have been superintendent for about twenty months and how long have you been with that institution?

A. A little over three years.

Q. Have you been with any other casinghead gasoline plant prior to that time? A. No, sir.

Q. What were your duties and position when you first went with the Ajax? A. Chief Engineer.

Q. Did that have anything to do with the manufacture of the product from casinghead gasoline plants? A. Yes, sir.

Q. Well it was merely the mechanical work of running your engine, was it or did you have something else to do with the manufacture of the materials? A. I had charge of the plant operation entirely.

Q. You had charge entirely of the operation of cars?

A. No, the entire operation of the plant.

Q. Are you familiar with the methods, used in compression plants—is yours a compression plant? A. Yes, sir.

Q. Are you familiar with the method by which the product is manufactured and produced at the casinghead plant?

A. Yes, sir.

Q. What is the name of the commodity which you produce? A. Gasoline.

By Mr. Diggs: If the Court please, we move to exclude the answer of the witness on the ground it is not shown he possesses this expert knowledge necessary to state the name and character of the article produced.

By Mr. Chambers: I cannot conceive of a more competent man to determine the product than the man who produces himself and had familiarized himself with the product and made it before it is produced as an expert, I mean.

By Mr. Diggs: In order to save time and save my record to this character of evidence of witnesses on this subject if it may be agreed the defendant has the right to strike it out after the close of the Government's case if it is not relevant and material I will wait until then and save a whole lot of time in putting in exceptions to the different questions.

By the Court: Very well.

Q. How long have you been producing this material from the compression plant, Mr. Haigh?

A. Ever since the plant was built three years ago.

Q. Did you ship your product from the casinghead plant?

A. Yes, sir.

Q. And prior to the shipping of the commodity—

By the Court: Let me see, just wait. What sort of a plant is that, a compression?

A. A compression plant, casinghead.

By the Court: Casinghead gas?

A. Yes, sir.

By the Court: And you get that from the gas pumped from the wells?

A. Gas comes off the oil wells.

By the Court: And then you compress it?

A. Yes, sir.

By the Court: And what do you say now when you compress it, what do you call it, what do you call the commodity after, after it is compressed.

A. Gasoline after it condensed.

By the Court: What do you mean by condensed?

A. Run through a set of cooling coils and condensed into a liquid form.

By the Court:

Q. That is a part of the process of compression?

Mr. Chambers: That is a part of the process they have all testified to.

The Court: Well, I am asking him.

Q. That is a process of compressing, the condensing of it?

A. Yes, sir.

Q. Then you say, after you get it through the compression, you call it gasoline? A. Yes, sir.

Q. Suppose you were to combine one-third naphtha and two-thirds of the commodity after it was compressed, what would you call it then? A. Gasoline.

Q. Just the same name you would before? A. Yes, sir.

Q. Why do you call it gasoline when it is through the compression process? How do you get the name gasoline?

A. Simply as a trade name.

The Court: Go ahead.



Q. That is a name that is used by the people that you have come in contact with who produce this material, is it?

A. Yes, sir.

Mr. Diggs: We object to him leading the witness.

Mr. Chambers: Well, I was just simply following up the question of the Court. It was inadvertent on my part.

Mr. Swacker: I would like to ask that the previous answer and question be stricken as a conclusion. He has not shown he is qualified.

The Court: Yes, I will strike that. Of course, he can testify as to the trade custom, but he first has to put the fact in there and lay the predicate for it.

Q. Now, do you produce, prior to shipping the gasoline, which you take from the compressor plant, do you prepare that for shipment in any other way excepting by blending?

A. No, sir, not at our plant.

Q. You don't weather it at your plant?

A. No, sir, it is not necessary.

Q. Now, how many gasoline plants are there at Jenks of of this character? A. I don't know.

Q. Well, you know some of the plants there, don't you?

A. Yes, sir.

Q. Well, can you name some of them? A. Yes, sir.

Q. I wish that you would give all that you know of and that you remember.

A. Well, there is the Totem, John Tell, Kelly, Swanson & Black; Texas Company; Tribes Gasoline Company and the Oklahoma Petroleum & Gasoline Company; Oil States Gasoline Company; Gypsy.

Q. Would you say that Jenks is quite a place for the manufacture of this commodity in the manner in which you manufacture it?

Mr. Swacker: I would like to object to that; not shown the witness is qualified; quite a place is a very indefinite term.

The Court: How many casinghead plants are there?

A. I don't know.

The Court: Well, about how many, as many as ten?

A. I think so.

The Court: Well, you know whether there is ten or not, don't you?

Mr. Chambers: Give your best judgment.

A. Yes, my judgment is that there is at least ten.

Q. Now, then, these plants that manufacture this commodity that you call gasoline, do they manufacture that by the compression method? A. Yes, sir.

Q. Are you familiar—you are familiar with the manner in which various plants manufacture their gasoline?

A. No, sir.

The Court: How many plants are you familiar with, as to how they manufacture?

A. I am familiar with all that our own company owns.

The Court: How many do they own?

A. Five.

Mr. Chambers: This is going to be a leading question and don't answer it.

Q. You have tried to inform yourself with the manner in which the other plants operate, haven't you, and the character of the plant, as to whether they manufacture this gasoline by compression the same as you do? A. Yes, sir.

Q. And you have informed yourself with reference to that matter, haven't you?

A. I know that all of them operate on the compression system there.

Q. Well, the compression system, they may use different machineries, but the system and the plant and the method is exactly the same, and has to be, don't it?

A. Not necessarily.

Q. I mean in the compression plant?

The Court: In principle?

A. In principle it is the same.

Q. In principle, the compression plant of all of them is the same? It is the same method of getting out the gasoline from the casinghead gas, ain't it? A. Yes, sir.

Q. Now, then, you ship your commodities, you say, after you blend it? A. Yes, sir.

Q. I will ask you to state, how long have you been shipping it? A. Billing it, you mean?

Q. Yes, billing it out? A. Since August, 1918.

Q. And I will ask you to state the designated name by which you bill out your commodity?

Mr. Diggs: I suppose this would still fall under that objection—

The Court: Yes.

A. We bill it as liquefied petroleum gas.

Q. As liquefied petroleum gas. Under what condition?

Mr. Diggs: Now, we move to exclude the statement

of facts contained in that [portion illegible at bottom of page] and immaterial under the issues in this case.

The Court: Yes. I don't think that is competent.

Mr. Chambers: You mean as to the manner in which he bills it out?

The Court: How could that affect it?

By Mr. Chambers: If the Court please I take it that if prior to December 2nd, 1916, the Gypsy Oil Company and all other companies recognized this commodity only for trade purposes, the name of this commodity not only for trade purposes but as gasoline and gas shipped it under a gasoline rate that would be competent evidence to establish a proper designated term under which this is—unless after December 2nd, 1916, when the unrefined naphtha rate was put into force it can be established that the commodity was not, while it took the rate as gasoline was not gasoline but unrefined naphtha, I show you two federal cases.

By the Court: I don't believe the cases are in point.

By Mr. Chambers: They are in point on this proposition in evidence in each one of the cases the Court recognized the test in reference to the manner in which the custom officers has designated these commodities, that were imported. Now we are trying to show by the shipper and by the carrier as to how the commodities in the absence of any rate with reference to unrefined naphtha—forget there is any rate as to unrefined naphtha, then this commodity should be shipped as gasoline and designated as gasoline because under the tariff—

By the Court: Let me show you what is driving in my mind and let you answer it. Now Congress is presumed to legislate as to its customs and tariffs in accordance with the terms used in the administration by the custom officers so you prove the way the Interstate Commerce Commission as to how they charged these rates and how they used these terms and these classifications.

By Mr. Chambers: But those decisions also recognize—

By the Court: Just wait until I get through—

By Mr. Chambers: I thought you were through, I beg your pardon.

By the Court: These people are presumed to know all about this. Now you go and say how this man—prove how this man billed out a specific act, how are they going

to meet that, you would have a thousand collateral issues, a thousand collateral issues, you say he billed this stuff out, how is he going to meet that, how can he know on the trial and how could they get ready. Would have to keep this Court adjourning and give them opportunity to see if it is so. I think as far as you can go is for these men to answer if this is gasoline, just like I would go down there and get a dipper of water and I know it is water. If they know that, why do they know that? Because it is universally called that, but by people that deal in it I think is as far as you can go.

Mr. Chambers: Well, will your Honor pardon me, I can't see why that isn't one circumstances in connection with others. For instance, one produces this same commodity and calls it gasoline, billed it and shipped it as gasoline, all prior to December, but it is one means of establishing the fact.

The Court: Take these books and show me where any Court has held that.

Mr. Chambers: 152 United States, and they permitted you to go to the dealers, to the general dealers and sellers of the commodity itself and prove by them as to the manner in which they sell it, as to whether they sell it as that commodity or this commodity. You have to go to one dealer and then another. We go to one shipper and then another shipper, and to one manufacturer and then another manufacturer, for the purpose of showing that in the industry itself it is recognized under all of its phases, both as to manufacture and shipment as this one commodity and especially if the Court will listen to me for one moment, prior to the time unrefined naphtha was put into effect, it was recognized shipping term under which this commodity was transported by all of the companies and by all of the railroads.

The Court: You did not ask whether if it was shipped by all railroads. You just asked him how he shipped it.

Mr. Chambers: I can't. I have got to bring on other witnesses to show that.

The Court: Go ahead. I will let it in subject to be moved to be stricken out.

Q. How did you bill your commodity?

+ A. Liquefied petroleum gas.

Q. Was it billed as liquefied petroleum gas where the pressure was below the ten pounds vapor pressure? A. No, sir.

Q. When you blend the commodity that you get from your plant with the naphtha, that is what you blend it with, ain't it? A. Yes, sir.

Q. When you blend it with that, doesn't it bring it down below the ten pound vapor pressure? A. No, sir.

Q. Well, it does occasionally bring it down?

Mr. Diggs: Your Honor, I think counsel should be required to keep within the rule and not suggest the very answer.

The Court: Yes, I think that. Don't lead the witness.

Q. What is the effect of blending your gasoline that you take out of your compression plant with the naphtha, with reference to the vapor tension? A. It lowers it.

Q. Is it your purpose—or, what is your purpose with reference to blending it? That is as to whether or making it subject to be shipped? A. Yes, sir, simply for market.

Q. Putting it upon the market? A. Yes, sir.

Q. Now, if it is above the ten pounds vapor pressure, you designate it in your shipping order liquefied petroleum gas? Do you ever ship any where the vapor pressure is less than ten pounds? A. We have. We haven't any at present.

Q. And how did you designate that? A. Gasoline.

Q. For what reason did you designate this commodity liquefied petroleum gas when you shipped it and it was above the ten pound vapor pressure?

A. By order of the Bureau of Explosives.

Mr. Chambers: That is all.

*Cross Examination by Mr. Diggs.*

Q. Did you say your name was Haigh? A. Yes, sir.

Q. Mr. Haigh, is it a part of your business, as superintendent of the plants you have named, to attend to the shipping of your product? A. Yes, sir.

Q. In shipping that product, it is your purpose to bill and describe it by the name which you consider it should be billed under the tariffs established by the Interstate Commerce Commission, is it?

✕ A. I bill as ordered by our sales office.

Q. What? A. I bill as I am ordered to by our sales office.

Q. Then, if you bill it as ordered by your sales office, you don't bill this product because you consider it to be gasoline or liquefied petroleum gas, but because you receive orders from your superiors so to bill it?

A. Primarily, yes, sir.

Q. You say that you know this product to be gasoline and

can you tell me the constituent elements of the product known on the market generally as gasoline? A. No, sir.

Q. Can you tell me the constituent elements of the product you produce from your plant which you say is gasoline?

A. No, sir.

Q. Can you tell me the particulars in which the product produced by you resembles or has in common with the article "generally purchased on the market as gasoline?"

A. It has practically the same burning and explosive qualities, the gravity and vapor tensions are the same as the other articles.

Q. The products produced by you you think has the same gravity as the gasoline you buy on the market do you?

A. After it is blended.

Q. After it is blended. How much do you blend it?

A. 56 to 58.

Q. Now as a matter of fact before you blend this article you call it raw gasoline don't you? A. Yes, sir.

Q. After you blend it you call it naphtha blend, don't you?

A. We have always designated it as gasoline.

Q. You have always designated it in your plants as gasoline. And the product that you shipped as liquefied petroleum gas is the same article you call gasoline except one has a blend in it and the other has not. Is that true? A. I can't say.

Q. You can't say? I understood you to say you had charge of the shipping? A. Yes, sir.

Q. And it is your duty also to see to the production of this article? A. Yes, sir.

Q. And how it gets on the market. In that connection are you familiar with the rules provided by the Corporation Commission as to how the product produced by your plant shall be sold and when it shall be called and treated as gasoline and when and how it shall be called and considered unrefined naphtha?

By Mr. Chambers: We object to that as being incompetent, irrelevant and immaterial and the time not having been specified.

Q. During the time that you have been making the shipments you testified here—

By Mr. Chambers: I object to that for the reason there is nothing to show that the corporation commission made orders of that kind but we object to it on the other grounds also.

By Mr. Diggs: I will state to the court I asked him this question for the reason they have used him as an expert as to what it is named, the designation of these articles.

By Mr. Chambers: But he is assuming——

By the Court: If he knows that, ask him if he is familiar and knows.

By Mr. Chambers: Note our exceptions.

A. We don't sell anything in Oklahoma, I am not familiar with the rules of the Corporation Commission.

By the Court: These shipments are all interstate shipments.

A. Yes, sir.

By the Court: Where is it sold if it is not sold in Oklahoma?

A. Kansas City, Missouri.

Q. You ship your article to Kansas City, Missouri and sell it there? A. No, sir.

Q. Well then *were* do you sell it?

A. All over the United States.

By the Court: You mean you ship it from your plant to Kansas City, Missouri?

A. No, sir, we ship to all points where the cars are called for.

Q. Is it your practice to ship from Oklahoma the cars of your product, it is not sold at the time it leaves your plant, but it is to be sold by you at the time it arrives at the point of destination?

A. You mean on shippers orders?

Q. You know what a sale is?

By the Court: Consigned to a broker or anybody else to be sold?

A. No, sir.

By the Court: Then why do you say the product is not sold in Oklahoma?

A. Because the sales office is located in Kansas City, Missouri.

Q. You mean by that the persons to whom you sell it all reside at other places than Oklahoma is that it? A. Yes, sir.

Q. And don't consider the sale until it arrives at the destination of the purchasing person ordering it?

A. The sale is negotiated with the sales agent in Kansas City, Missouri.

Q. By whom? A. By Mr. Walter Crosby.

Q. And you are told by him—who is Mr. Walter Crosby?

A. He is the sales manager for the Ajax Gasoline Company.



Q. Then you deliver it on the cars here in accordance with his instructions? A. Yes, sir.

Q. And where is the price paid?

A. At the Kansas City office.

The Court: And under that system of sales and business, you ship it in the name you have stated?

A. Yes, sir.

The Court: Go ahead.

Q. Mr. Haigh, what is the gravity of the raw casinghead gasoline produced by you?

A. It varies from 80 to 84.

Q. Varies from 80 to 84. To what gravity do you reduce it before shipping? A. Above 56 and below 58.

Q. When your raw casinghead gasoline is produced and the gravity is between 80 and 84, did you say? A. Yes, sir.

Q. Between 80 and 84, is that commodity in shape to be generally used in the market as gasoline? A. No, sir.

Q. It is not. All the part of your gasoline that you ship and sell in Kansas City is shipped to refineries, is it?

A. No, sir.

Q. It is not. All the raw that you ship is shipped to refineries? A. It has been in the past.

Q. I say, all you have shipped was shipped to refineries?

A. Yes, sir.

Q. To be refined by them?

A. I suppose so. I have no knowledge.

Mr. Chambers: Well, we move the court to strike that answer of the witness from the record and the jury be instructed not to consider it.

Mr. Diggs: In substance, I asked if he shipped to this refinery, and he said yes; I then asked if he sent it to them to be further refined.

Mr. Chambers: He said he supposed so; he didn't know.

The Court: What was your answer? You suppose, but you don't know?

A. Yes, sir.

The Court: I will strike that out. Do you know what they do with it when you ship it there, of your own knowledge?

A. No, sir.

Q. All the shipments you have made, Mr. Haigh, are shipped to points north of your plant, aren't they?

A. All the shipments of the blended.

Q. Yes, and all raw casinghead? A. No.

Q. Do you ship all your raw casinghead gas north?

A. No, sir.

Q. Do you ship all of your blend north?

A. All I have ever shipped has gone north.

Q. Do you know whether, over the lines that you have shipped your blended gasoline going north, there was in force a rate or traffic regulation permitting your product to be shipped as unrefined naphtha?

Mr. Chambers: We object to that as incompetent and irrelevant; assuming a fact that has not been established; assuming that there was a tariff.

[ ] What I am getting at, is the rate for this product, assuming that there was a rate for this product—

The Court: I will permit you to ask him whether he knows at that time whether such shipment was made there, and was there a rate on unrefined naphtha.

Q. Did you know, at the time you made the shipment of this blended casinghead gasoline to which you have testified, if there was any other tariff rate under which you could ship it or describe it, than gasoline?

Mr. Chambers: I object. The question the court suggested—I have no objection to it, but this is asking for the conclusion of this witness.

Mr. Diggs: He testified he shipped this petroleum gasoline in accordance with the rules and the regulations.

The Court: I will permit you to ask him if there was a rule or a regulation by which unrefined naphtha or anything else could be shipped. I will permit you then to ask him that specific question, but I will eliminate the conclusion, and then if he says, if he states yes, then I will let you follow that up with the other question.

Mr. Diggs: If I gather the court's direction—

The Court: Ask him, was there a rate on unrefined naphtha, and he says yes, then you would be permitted to ask him why he did not ship it under that or this, so that is sort of a compound question.

Q. Was there a rate on unrefined naphtha between the shipping point to which you shipped your blended gasoline from and to the points to which they were shipped?

✓ A. I do not know.

✓ Q. On unrefined naphtha?

The Court: He said he did not know.

✓ A. I don't know.

Q. You do know, however, the rate and the kind under which you must ship your raw casinghead gasoline, going north or south?

The Court: Do you know the rate at the time you made the shipment?

A. No, sir.

Q. Do you know anything about the tariff, Mr. Haigh?

A. Very little.

Q. And your only purpose in designating, you only designated the name under which this product is shipped in the bills of lading by the direction of your superior?

A. Yes, sir.

By the Court: Now my understanding is you are directed to do that by this general sales agent that sells this commodity at different places over the United States?

A. By the sales agent and by the Interstate Commerce Commission.

By the Court: Well the sales agent whom you understood was directing you under those regulations?

A. Yes, sir.

By the Court: Mr. Haigh what did you say was the gravity of raw casinghead gasoline after you had blended it for shipping?

A. Between 56 and 58.

Q. When you had reduced that raw casinghead gasoline as you call it to 56 or 58 gravity the article you would ship north then would only have from five to ten per cent or a little more than that of casinghead gasoline in it wouldn't it?

A. It would be more than that.

Q. You think so? A. I know that.

By Mr. Diggs: Alright.

By the Court: Now then when you say you were following the instructions of your general sales agent and the regulations of the Interstate Commerce Commission how did you get those regulations?

A. One copy was sent me by the Interstate Commerce Commission and the sales agent sent me another copy.

By the Court: When he gave you instructions about the shipment he sent you copy of those regulations from the Interstate Commerce Commission.

A. Yes, sir.

By the Court: Go ahead, I just wanted to get that clear in my mind, that is the reason that I asked the question.

Q. Mr. Haigh after you have produced your raw gas with gasoline by blending to 56 to 58 gravity how much of your original raw casinghead gasoline is in that mixture so prepared? A. About twenty-five per cent.

Q. How much of that original casinghead gasoline would be in there at the time it got to market?

A. I don't understand the question.

Q. Can you state how much at the time this blended product gets to market are you able to state approximately, what at the time you ship it, are you able to state approximately how much of the original casinghead gasoline would be in it in your judgment?

A. About twenty-five per cent at the time we ship it; I don't know about the arrival.

Q. 25 per cent at the time you ship it. Alright that is all.

*Redirect Examination by Mr. Chambers.*

Q. What is the color of your naphtha you put in with the casinghead gasoline? A. Water white.

Q. And what is the color of the commodity after you have mixed the casinghead gasoline and the naphtha together?

A. White.

Q. Where do you get your naphtha?

A. We bought some from the White Eagle at Augusta, and some from the Texas.

Q. You don't manufacture that yourself? A. No, sir.

Q. You buy it from the refineries? A. Yes, sir.

By the Court: What proportion do you use in blending?

A. Well, it varies to seventy-five per cent naphtha to reduce it to that gravity.

By the Court: You would have about two of naphtha and one of casinghead gasoline?

A. Nearly three to one.

By the Court: Go ahead.

By Mr. Chambers: That is all.

*Recross Examination.*

Q. Mr. Haigh, are you able to state what was the gravity of the naphtha you used in blending, to blend with your raw casinghead gasoline? A. It was from 50 to 51.

✓ Q. From 50 to 51? A. Yes, sir.

Q. Your method being that, the Baume method?

A. Yes, sir.

Q. In making your blend, did you make it in accordance with any distillation test specifications? A. Yes, sir.

Q. What are they?

A. They are recommended by the Bureau of Explosives, C. J. Tagliadue Manufacturing Company.

Q. But you—by this blending that you have described, you made the finished product? A. Yes, sir.

Q. And in your judgment, the best judgment, your best judgment, this finished product is gasoline? A. Yes, sir.

(Witness dismissed)

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Whereupon, E. J. LEAGUE, a witness on behalf of the Government, having been first duly sworn, according to law, was called as a witness and testified as follows, to-wit:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury.

A. E. J. League.

Q. Where do you live? A. Chicago, Illinois.

Q. What is your business?

A. I am inspector of the Bureau of Explosives.

Q. How long have you been connected with the Bureau of Explosives, is that what you say it is?

A. Yes, sir, since March 1st, 1916.

Q. And what was the nature and character of your duties in your employment of the Bureau of Explosives?

A. To inspect preparation and handling of shipments of explosives and other dangerous articles by common carriers.

Q. That was general? A. Yes, sir.

Q. Did you, in the carrying out of your duties, have occasion to inspect the gasoline and casinghead gasolines?

A. Yes, sir.

Q. Was that one of the—gasoline and casinghead gasoline was one of the commodities that came within the jurisdiction, if that is the proper word, of the Bureau of Explosives?

A. Yes, sir.

Q. Now, have you had any experience with reference to the inspecting of gasoline and casinghead gasoline.

A. In so far as the I. C. C. Regulations are concerned, yes, sir.

Q. Well, the I. C. C. Regulations is the Interstate Commerce Commission regulations? A. Yes, sir.

Q. The Bureau of Explosives, it was their business of inspecting under the rules and regulations of the Interstate Commerce Commission, as well as our own rules and regulations, is that right? A. Yes, sir.

Q. That is a government institution, is it? A. No, sir.

Q. It is a railroad institution? A. Yes, sir,

Q. You are not a government officer, then? A. No, sir.

Q. Well, did you have any experience in testing, under the rules and regulations, casinghead gasoline in Oklahoma?

A. Yes, sir.

Q. And have you had experience in that line in other fields besides Oklahoma? A. Yes, sir.

Q. In what other fields?

A. Wyoming, Pennsylvania, West Virginia, Illinois, Ohio; that is all I recall.

Q. Well, your duties, then, have demanded your attention at all of the casinghead gasoline places where it is produced?

A. Nearly all of them, sir.

Q. Now, what else have you devoted your attention to that commodity—I believe you said you went in, in March, 1915, with the Bureau of Explosives, what else?

A. Practically all of that time up to May 1, 1919, with the exception of possibly six months.

Q. What were your qualifications in inspecting—just quit, cut that out—in inspecting this casinghead gasoline, what was the nature of your duties to make the inspection as it should be made, according to the Bureau of Explosives regulations?

A. My main object was to determine the vapor tension.

Q. Your main object was to determine the vapor tension?

A. Of the gasoline.

Q. That was to secure safety? A. Yes, sir.

Q. As near as possible? A. Yes, sir.

Q. Well, now then, did you ever have anything other than, did you make any other tests or investigation as to this commodity? A. Only tested the gravity.

Q. The gravity? A. Yes, sir.

Q. You would test it for the vapor tension and test it for the gravity? A. Yes, sir.

Q. When did you first come down to Oklahoma to make the inspection and test? A. June 1st, 1916, possibly.

Q. Give the first—June 1st, 1916? A. Yes, sir.

Q. Now, where did you make the test? Can you remember?

A. Yes, sir. Cushing, Drumright, Sapulpa, Kiefer, Cleveland, practically all of the towns where casinghead gas is made in Oklahoma.

Q. What was the characteristics, if I am getting at it right, of the gasoline commodities that you tested and inspected?

Mr. Swacker: I would like at this time—I don't understand exactly what the question is, but I think we ought to know what the witness is being qualified for for that pur-

pose, otherwise there is a lot of irrelevant testimony. I thought it would have been developed by now, or I would have objected sooner. I think we should have a statement of what he is qualifying him for.

The Court: Yes. What is the object of it?

By the Court: What is the object of this.

By Mr. Chambers: I want to prove by him certain definite inspections he made of your Kiefer plant at and the commodities that he tested and the conversation that he had.

By the Court: Well, go on and ask him.

Q. Did you inspect the Kiefer plant? A. Yes, sir.

By Mr. Chambers: I haven't got to that yet, I just wanted to show his general supervision of this territory.

By the Court: Go ahead.

Q. Did you inspect the Gypsy Oil Company at Kiefer, its gasoline? A. Yes, sir.

Q. Do you know the character of the gasoline that you inspected and as to whether it was the raw material that came out of the compression plant of the material that was blended with naphtha or both of them? A. I have tested both.

Q. You have tested both? A. Yes, sir.

Q. And have you tested both of those commodities during the period from 1916, March, until May, 1919, at other places and at other plants in Oklahoma? A. Intermittently, yes, sir.

Q. And to what extent, what plants, all of them?

A. No, sir, not all of them.

Q. Well, I guess then you had better tell us what plants you did? A. About fifty per cent of them.

Q. About fifty per cent of the gasoline plants in Oklahoma? A. Yes, sir.

Q. During that period of time? A. Yes, sir.

Q. Well, could you make an estimate of how many tank cars of these commodities that you tested during that period.

A. No, sir.

Q. Well could you approximate whether it was several hundred? A. Yes, sir.

Q. Or several thousand which would you say?

A. Several hundred.

Q. Several hundred? A. Yes, sir.

Q. In testing these commodities have you had sufficient experience so you can determine the character of the commodities? A. In what respect?

Q. Whether it is casinghead blended or unblended?

By the Court: When you inspected it could you tell



whether it was a blended commodity or whether it was a commodity as it came from the compression plant?

Q. That is, were you able to make that distinction just from inspection? A. Ordinarily, yes, sir.

Q. How would you do that now?

A. In a great many instances I was guided by the vapor tension.

By Mr. Chambers: Permit me to go ahead this way and you can stop me when you want me to.

By Mr. Swacker: Alright.

Q. When you say you were guided by the vapor tension and it was below ten pounds you could see it was a blended product and if it was above that you could say it was pure casinghead gasoline, is that what you mean?

A. Ordinarily, yes, sir.

Q. How many cars did you inspect for the Gypsy Oil Company during that time. Let's put it at Kiefer to start with, about how many, have you a record of it?

A. There is perhaps a record of it in the New York office. I will say approximately about a hundred.

Q. At the Kiefer plant? A. Yes, sir.

Q. You made the vapor tension? A. Yes, sir.

Q. You took the gravity? A. Yes, sir.

Q. You took the color? A. No, sir.

Q. Could you tell to the court and jury *was* what the color was as far as the naked eye was concerned?

A. It was water white.

Q. Water white? A. Yes, sir.

Q. Did you in 1916 and prior to December 2, have any talk with the superintendent at Kiefer? A. No, sir.

Q. Did you have any talk with Mr. Donovan, General Superintendent?

A. Yes, sir, I have had conversations with him.

Q. Prior to December 2nd, 1916? A. Yes, sir.

Q. That would be the first time you come down here?

A. Yes, sir.

Q. Do you know Mr. Millard of the Gypsy plant at Kiefer?

A. Yes, sir.

Q. And did you talk with him on that first occasion?

A. Prior to December 2nd, 1916?

Q. Yes, sir, you said you were here in June, I think you said?

A. Yes, sir, I have had conversations with him.

Q. Did either Mr. Donovan tell you what the material was that he was manufacturing at Kiefer?

A. Casinghead gasoline.

Q. Did he tell you what the product was? After he had put the naphtha in it and tell you how he was shipping it?

A. Casinghead gasoline.

Q. Did he tell you he was shipping it as casinghead gasoline or gasoline after it had been blended?

A. I don't recall any stated term that he used.

Q. But he used the term casinghead gasoline when you spoke of this product at all times, did he?

A. Prior to December 2, 1916, yes, sir.

Q. Prior to December 2, 1917, did he use any other term for it except casinghead gasoline?

A. I don't catch the date.

Q. Prior to December 2, 1916, did he use any other term except casinghead gasoline? A. Not that I ever heard.

Q. Did Mr. Millard? A. That is all I ever heard.

Q. Did Mr. Millard use the term casinghead gasoline prior to December 2, 1916, in his conversations with you?

A. Yes, sir.

Q. Did he use any other terms? A. No, sir.

Q. After December 2, 1916, did you examine the commodities that they had down there? A. Yes, sir.

Q. Can you tell whether it was the same commodity you examined prior to December 2, 1916.

By Mr. Swacker: Now, I merely wish to object to that as being incompetent, irrelevant and immaterial on the same basis we made objection to all of that matter, outside the period of time when there was an unrefined naphtha rate in effect on the grounds it violates the *res inter alios acta* rule. Just save an exception.

By the Court: Now what time did you ask him about?

A. I am asking him now if he had a conversation with Mr. Millard with reference to the designated name of the commodity prior to December 2, 1916, as to what it was. He said it was gasoline. Now I asked him if he called it any other name.

By Mr. Swacker: He said casinghead gasoline.

By the Court: I don't think he can prove conversation with Mr. Millard. I will allow you to prove the conduct of the business what they shipped and what they did. Now to prove what some man says unless he is the agent of this company I don't think you can do that.

By Mr. Chambers: He was the superintendent.

By the Court: Not of the Gulf Refining Company. They Gypsy is not on trial.

By Mr. Chambers: I understood we had that connected up.

By the Court: I don't so understand.

By Mr. Chambers: Then that will necessitate recalling this witness.

By Mr. Diggs: I don't like to interrupt the gentlemen but it appears in this record already that this so-called casinghead gasoline was always shipped under the name of gasoline prior to——

By the Court: They want to prove prior to that the officers Mr. Millard, the manager and superintendent stated that. I won't allow them to do that unless they show that the Gypsy was the agent of the Gulf. Now the act, that is a fact, the action of the company what they did, that is a fact.

By Mr. Chambers: I think we have been misled. I think I have misstated it and I *thin*—the question I asked was as to whether or not the material he investigated afterwards was of the same character of material he investigated prior to December 2, 1916. That was the question I believe.

Q. In your opinion, was the commodity that you testified you investigated after December 2, 1916, the same commodity, the same character and same commodity investigated prior to that time? A. Yes, sir.

The Court: I will let him prove that, but not what the officer said.

Mr. Swacker: I make the same objection. It is irrelevant, incompetent and immaterial.

The Court: Very well. Let's see what they said. I will see.

Mr. Chambers: I identify this as Government's Exhibit 58 and 59.

Q. I hand you Exhibit 58 and 59. ——

Mr. Chambers: I am going to introduce these after I question him in regard to them.

Mr. Swacker: I don't regard them as being important, but we will object to them when offered.

Q. What are those exhibits, Mr. League?

A. My reports on several cars of casinghead gasoline manufactured by the Gypsy Company.

Q. Now, do those reports of yours show the material and—rather, show the nature and character of the inspection and

investigation you gave these cars, and you got a sample of the character of the cars in general? A. Yes, sir.

Q. Now will you tell me just from those reports, what it is you have to take into consideration in your investigation?

A. Mainly the vapor tension.

Q. Mainly the vapor tension? A. Yes, sir.

Q. Do you take the gravity? A. Yes, sir.

Q. Ain't there anything else you do to it? Take the temperature?

A. We take the temperature at the time our inspection is made, how the commodity is loaded, what method is used to make the gasoline, what it is blended with.

Q. Now, taking these reports that you have got, what does it say, whether it was the straight commodity from the compressor, or whether it was blended, you report on that, don't you?

The Court: I am not going to permit you to introduce those reports in evidence. You can show them to him, if he made them, to refresh his recollection, so he can testify what he did.

Mr. Chambers: Then it will be proper for me to ask him if he made a report?

The Court: Yes, but not put in the record what they say and things like that.

Q. Well, did you make a report?

The Court: Just show him that, and ask him if he made that report at the time, and he can have that to refresh his recollection, and then ask him what he found.

Mr. Chambers: Well, that is what I am doing.

The Court: No, you asked him what that thing, shows, and the stenographer is putting it into the record.

Mr. Chambers: The only thing is, I am using this as a guide to myself, and he has got the other.

The Court: Yes, but they are putting that in the record, and I am going to keep the record straight.

Mr. Chambers: Well, it is just a misapprehension on my part.

By the Court: You asked him what that thing shows. If he answers that then that is reading that report into the record. So that report is only competent for him to refresh his recollection.

Q. Tell the Court—well pardon me I didn't intend to put it that way. I intended if the report showed as to whether the material was blended or not.

By the Court: Just show him the memorandum of his report and ask him was the material you inspected blended or was it the product of the casinghead gas at the close of the compression.

By Mr. Swacker: I have no objection to the witness taking that paper and giving the car number and saying what he did and found but not what he said about it.

Q. Will you take this paper and tell me what cars you examined, the numbers of the cars that you examined?

A. G. R. C. X. 2149; 1708, 2120, 2116 and 2185.

By Mr. Chambers: Do I understand these are in the indictment?

By Mr. Gann: The last one appears not to be in the indictment.

By the Court: Strike out that last one.

Q. Were those cars, cars that were shipping the immediate product of the compression or of the blended material?

A. Blended material.

Q. And when did you make that investigation? A. March 14, 1918.

Q. And what was the vapor tension? A. Ten pounds.

Q. And what was the gravity? A. 73.5.

By Mr. Swacker: At what temperature?

A. That is the corrected gravity.

By the Court: What was the temperature?

A. 61.

By Mr. Swacker: That isn't the gravity at the temperature 61?

A. No, sir, that is the corrected gravity at 60.

Mr. Swacker: You did not find it that gravity, but the temperature having been 61, you computed it it would have been that gravity had the temperature been sixty, and that is what it states?

A. Yes, sir

Mr. Swacker: Not what the fact is, but it would have been if had been sixty?

A. Yes, sir.

Q. That is the manner in which you take gravity?

A. Yes, sir.

Mr. Chambers: I believe we will offer that in evidence.

Mr. Swacker: I am objecting as not shown to have

come to the defendant in any shape or form, and may be a characterization of his, and we regard it as improper and not binding on the defendant.

The Court: That is an inspection made by?

Mr. Chambers: A railroad man.

The Court: I will sustain the objection. That goes—a paper must either be an official document that binds everybody or it must show some connection with the defendant, that is the way it looks to me. I don't see how it could be competent under any purpose.

Q. These reports were not submitted to any of the officers of the Gypsy Oil Company, or copies submitted to them?

A. No, sir.

Q. Merely a transaction direct between you and the Bureau of Explosives? A. Yes, sir.

Mr. Chambers: I think that is correct. I will not insist on them.

The Court: I sustain the objection.

Q. Now then will you say that you examined probably fifty other—that you examined fifty per cent of the casinghead gasoline plants in the state? A. Yes, sir.

Q. And some of them—did you examine all the plants at Keifer? A. Yes, sir.

Q. You examined all the plants at Jenks? A. Yes, sir.

Q. Did you examine all the plants at Drumright?

A. Yes, sir.

Q. Do you know how those other plants were describing and shipping their—by name, the products of their compressors? A. Yes, sir.

Mr. Swacker: I object to any answer to that as being incompetent, irrelevant and immaterial. He has not shown the conditions were the same there with reference—

Q. That is right. I had probably better ask that. Were the commodities that you examined from these other plants of the same kind and character as the commodities that you examined at the Gypsy Company plant? A. Practically so.

Q. Now, how did all these other plants ship their commodities, and what did they call it and designate it for shipment?

The Court: How does he know how it was shipped?

A. I make an inspection.

Q. Did you inspect—in your report you reported upon each particular car that you inspected? A. Yes, sir.

Q. Now, then, these cars for these other people, how did they ship and designate the commodity that they were shipping prior to December 2, 1916, and after December 2, 1916, up until the time you say May, 1919.

Mr. Swacker: I object to that question, or answer to it, as being incompetent, irrelevant and immaterial, in no wise binding on the defendant here, and incompetent for the reason that it is not shown the conditions were the same, in so far as to what the tariff regulations were that might control such other parties, and how they should ship and designate their products.

Mr. Green: We might further object on the ground that it is a conclusion of the witness.

The Court: The jury may be excused for about five minutes.

And thereafter court convened after a short recess and the following proceedings were had, to-wit:

By Mr. Chambers: That is you want to hear from me.

By the Court: Yes I will hear you.

By Mr. Chambers: If the Court please the position I take is this that this testimony is competent not only for showing intent, which we don't care to present at this time. The principal point I want to impress upon the mind of the Court is this, that this article if possible should be designated by a name that would bring it within the regulation of the tariff, forgetting that there was anything such as unrefined naphtha in the rate, the railroad companies, the shippers and the people who were dealing with the commodity designated it as gasoline not only for the purpose of the name being use- by the commercial and trade name or establish what the name was, but forgetting and eliminating that it was for the purpose of showing that the trade considered it, shippers considered it and the carriers understood and designated this particular article for shipping purposes as gasoline. Now the Court don't read—if you will permit me to have one of those Federal Reporters 151 and 147. The Court don't read the authorities, I mean you probably don't lay the same stress on them that I do. It is true that it is not a question directly decided in this case. This is a case though of the Circuit Court of Appeals and it dwells especially on the proposition that evidence was introduced in that case for the purpose of determining the rates that was established upon this particular commodity that is in controversy by the custom officials. It says, but of course



that would include the importer or exporter of the commodity and in this case the Court not only admits that character of testimony but bases his decision to a great extent, I take it that it does from this language. While this provision is in force while opium was universally classified by the custom officers at New York as subject to duty as " \* \* \* etc" and he recognizes the evidence was introduced so it merely mentions how this particular commodity was regarded and classified by the custom officers which would show the manner in which it was brought in and put through the custom houses. He says articles answers that description,—

By the Court: You have not offered evidence that they went down there and classified it but your evidence shows that the shipper makes up his order he classifies it—

By Mr. Chambers: Now that makes it better evidence stronger still.

Mr. Chambers: If the railroad agent, knowing they classified, have permitted any article to be classified different from what it is, he is liable just the same as the shipper, and it is his duty. That is a part of a railroad officer's duty.

The Court: Yes, but you are trying to establish—you might say it was universal that the admission would be they did do it.

Mr. Chambers: That is just what I want to do.

The Court: Yes, but you can not establish it the way you started to do it. You can not ask him if the conditions are the same, and he says practically so. Now, you ask him—

Mr. Chambers: I am going to, with the permission of the Court, with reference to the other plants in Oklahoma.

The Court: I sustain the objection to this question, in the way it is asked.

Mr. Chambers: Now, then, in the 152 United States, which I presented to the Court yesterday, the Court held that the proper way of determining the manner in which rates shall be established is the commercial name of the article itself, if that can be determined. If not, then the name that was known by the people generally. I suppose that would be the proper way of saying it. Now, the Court noticed, they cited the 151 United States.

The Court: I have read that.

Mr. Chambers: I didn't give this to the Court, because I hadn't read it, but it goes into detail more than the 152nd, and holds the same rule and the same principle, as set forth in the 152nd. Now, the 147 Federal, while it is not as broad and comprehensive as the 151, I want—

The Court: One of them is just a District Court case.

Mr. Chambers: I believe it is just a District Court case. Of course, if the reasoning is good, it has its weight.

Mr. Swacker: Are any of those criminal cases? We haven't seen them.

Mr. Chambers: I don't think they are criminal cases, but the rule is, I can get any number of authorities, that the rule with reference to this evidence is the same in criminal as in civil cases. It shows the same as 155, of course, that evidence was introduced for the purpose of showing what the Custom House officials and the importers understood this commodity to be.

Mr. Swacker: Does your Honor care to hear our theory of the objection to the character of the evidence?

The Court: I am going to sustain the objection to this general question, and then let him frame a specific question, and lay a predicate and a condition.

Q. Now, then, what other plant besides the Gypsy plant is in operation at Keifer that you know of? Just name one of the same kind of a plant that you inspected.

A. Crosby & Gillespie.

Q. Crosby & Gillespie? A. Yes, sir.

Q. Did you make an examination of that plant to the extent that you know the nature and manner by which they manufacture casinghead gasoline? A. Yes, sir.

Q. Is it by means of compression, what we call the compression process? A. Yes, sir.

The Court: Same process as the Gypsy Company has?

A. Yes, sir.

Q. The Gypsy Company is a compression process?

A. Yes, sir.

Q. Now, then, did you examine any of the cars of blended material at this plant of Crosby & Gillespie? A. Yes, sir.

Q. Did you take the numbers of them, and had they been billed? A. Crosby & Gillespie?

Q. Yes? A. Yes, sir.

Q. Can you state as to whether—

Mr. Chambers: I believe we have already introduced evidence as to what the commodity was in the Crosby & Gillespie tank cars.

The Court: Yes.

Q. Now, how did they designate this commodity when they shipped it out?

Mr. Swacker: Now, we object.

Mr. Chambers: Pardon me, just one moment.

Q. The name or names they gave it? A. Gasoline.

Mr. Chambers: You mustn't answer while he is objecting.

Mr. Swacker: Now, we do object to that, as incompetent, irrelevant and immaterial. Our objection that it is immaterial and incompetent runs particularly to this position: the only circumstances that have been sought to be shown to be the same are the circumstances of what the commodity is, and even that is not at all fully covered.

The Court: The superintendent testified about that yesterday.

Mr. Swacker: Yes, sir, but he testified about some particular material, and that was the material that went to Port Arthur. We have already admitted this morning all about that, and he couldn't prove anything more about it than we admitted.

Mr. Chambers: And he could have answered that,—

Mr. Swacker: Here is the trouble about that.

Mr. Chambers: I am asking the witness.

Mr. Swacker: The contentions you make,—

The Court: The evidence showed yesterday that they shipped,—that certain shipments of their commodity was shipped to Port Arthur.

Mr. Chambers: Yes, sir. But, if you will pardon me, I don't care where they were shipped to.

The Court: Yes. But you have got in the evidence about that. Why not take up another one? Why do you want to go over it?

Mr. Chambers: I beg your pardon. I did not remember that fact. As far as the Crosby & Gillespie plant,—

Mr. Swacker: And this answer will be stricken from the record?

Mr. Chambers: No, sir.

The Court: They have admitted it was called gasoline.

Mr. Chambers: If they admit it, then you may call it that.

Q. Now, what other plant, tank cars of some other companies did you inspect?

The Court: Any other plant, you testified about the plant at Keifer, of the Gypsy Oil Company plant. Any other plant?

A. Yes, sir. The Chestnut and Smith.

Mr. Chambers: Have they been——

The Court: No, sir, nothing said about it.

Q. Did you investigate it there, those cars? A. Yes, sir.

Q. Is that the same character of compression plants, same method of making casinghead gasoline that the Gypsy Company has? A. Yes, sir.

Q. Was that a blended material? A. Yes, sir.

Q. Do you know that was shipped? A. Yes, sir.

Mr. Swacker: Just a minute.

Q. I will ask you to state what was the designated term under which that was shipped? Don't answer the question.

Mr. Swacker: We desire to make an objection.

The Court: You proved it was a blended material. What do you mean by a blended material?

A. Raw casinghead gasoline blended with some other petroleum product.

By the Court: Do you mean naphtha?

A. Yes, sir, that is one of them.

By the Court: I think that is too indefinite

Q. Do you know whether this company blended their casinghead gasoline with naphtha or not? A. Yes, sir.

Q. Did they blend it with naphtha? A. Yes, sir.

By the Court: Well now if he knows how they shipped that which was blended with naphtha, I will permit him to state the practice of shipping that.

Q. Answer the question.

By Mr. Swacker: Now, we object as being incompetent, irrelevant and immaterial. In the first place the circumstances not being shown to be similar or identical to admit evidence with regard to that.

By the Court: Wherein are they not similar. I am confining the question to the blended material where it is

from the combination of the product resulting from a compression of the casinghead gas with the naphtha.

By Mr. Diggs: If the Court please if you will permit us to state our objection then we *well* take up the question of the Court wherein the similarity exists.

By Mr. Swacker: I will take that question up for a moment. The similarity or lack of dissimilarity is insufficiently shown in this respect. This witness does not know nor has he attempted to state the quality of material or degrees of blending or quantities used in blending, whether the result in blend is anything like the same stuff shipped by the Gypsy and in the second place he is not attempting to confine it to points where there were unrefined naphtha rates in effect.

By the Court: I will overrule you on that point. What then, what about the question of naphtha blended with the raw—what you call the raw casinghead gasoline if you know how would that effect just what the product was?

A. If I knew the quantity of naphtha in each blend.

By the Court: What would the quantity of naphtha in each blend would that depend on the character of what the blended article was?

By Mr. Swacker: Would that determine what the blended article was?

By Mr. Chambers: That is for shipping purposes.

By the Court: Well what the commercial name would be.

A. That would not affect the name.

By the Court: That would not affect the commercial name?

A. No, sir.

By Mr. Swacker: Now I object to his answer on that as part of the evidence offered on the ground that he has not been qualified as to what were the commercial names of this product.

By the Court: I should think he should know, he is a man that is an inspector.

By Mr. Swacker: Well he doesn't inspect for the purpose of sale. He inspects for the physical characteristics.

By the Court: Now when you make your inspection

and make your report do you designate the name of the product that is in there that you inspect?

A. Yes, sir.

By the Court: Where do you get that name from?

A. We know that that is a gasoline plant before we go there, they make nothing else.

By the Court: Here is the point I want to know; is whether or not you solely make the designation of the name from your information or whether you get that from the different plants you talk to around or the trade, how do you determine the name you will give the product you have inspected?

A. I use the name that is known generally.

By the Court: How do you ascertain the name that is known generally, for instance they, you go down there and you find this commodity. Here is raw casinghead gasoline, gasoline which has compressed and you find some naphtha in there. Where do you get the information by which you designate the name that you are going to mark that car; how do you get the information to designate the name of that car?

A. By the name it is known by among the men around the plant, for instance or among shippers of that commodity?

By the Court: How long have you been at this business?

A. Since March 1, 1916.

By the Court: What was your business prior to that?

A. Assistant train master, P. & P. U. Railroad Company.

By the Court: I believe I will let him answer the question, state your exceptions.

By Mr. Green: May I make one suggestion to the Court? We take the position that it is immaterial first, even though it might be known as gasoline generally yet if the Court determines from the evidence we introduce here that it is further refined at Port Arthur, that it is an unrefined article and all this testimony is immaterial and irrelevant.

The Court: The authorities hold, away back in 103 U.S., that they say that the rates are presumed to be,—

Mr. Swacker: Railroad rates.

The Court: Rates.

Mr. Swacker: Does it not say custom rates?

The Court: Just as rates, but the custom rate grows out of the water shipment. Let me read the case.

Mr. Green: We are familiar with those line of authorities. They are different from the Interstate Commerce Commission for the fact that you take the proposition, it is a very technical proposition filed with the heads of the people who know what the commodity is and governs. For that reason, there might be a rate on clothing, and yet there might be a rate on gloves, and all those gloves are clothing. The glove rate would govern and it would be a very technical proposition which would be decided by the people that know.

The Court: That would be a matter of proof if it has a technical name.

Mr. Green: We take the position we will show that and make our exceptions and save our record.

The Court: Very well, but I think this is competent as to how much it is worth that is another question.

Mr. Swacker: And also object if there can be any ambiguity of the name of a thing, under the American Tie & Timber case, this Court would be ousted of jurisdiction in this case altogether, and the matter could be decided by the Interstate Commerce Commission, solely.

The Court: Very well, you can raise that if the evidence—after the evidence is in.

Mr. Swacker: And I object to its admission at this time, on the ground that it is irrelevant, incompetent and immaterial, and not binding on the Gulf Refining Company, it nowhere being shown that the Gulf Refining Company was cognizant or bound by what Chestnut and Smith might do in the shipping orders, and not shown the circumstances surrounding it are substantially similar to the circumstances surrounding the Gypsy Oil Company, and not shown material shipped is the same commodity with respect to the blend, the degree of blend, and for the further reason, that it is not shown where the shipments referred to by the witness were from or where they were moving to, as to whether or not these are rates on unrefined naphtha between the shipping point or whether these are rates on unrefined naphtha between the shipping point of the Chestnut & Smith shipments, and the destination which we contend is the controlling matter as to what the commodity shall be designated as for shipping purposes, the witness having testified to the customs in respect to the shipment,—the witness—



By Mr. Diggs: If your Honor please we want to object as incompetent to prove a custom or usage by taking a particular instance from particular people. That is not the way of proving a custom or usage and further that there is no proof that such custom or usage has been brought to the knowledge of the Gulf Refining Company.

By the Court: I am just letting him testify as to a practice.

By Mr. Swacker: Of somebody else.

By the Court: Practiced in the course of business.

By Mr. Diggs: Then do I understand the Court to exclude that part of it.

By the Court: I have not permitted him to state what people told him.

By Mr. Diggs: What other people did.

By the Court: It is the conduct of the business.

By Mr. Diggs: I raise the proposition it is not the way to prove the custom or usage by showing what certain individuals engaged in the same business did.

By the Court: Well they prove the name, the practice as to how it is used. Your objection is overruled and you will be allowed your exception Mr. Diggs.

By Mr. Diggs: Exception.

Q. How did they bill that out? A. Gasoline.

Q. Now do you know D. W. Franchot? A. Yes, sir.

Q. Are they at Kiefer? A. Yes, sir.

Q. What do they do? A. Make casinghead gasoline.

Q. And do they blend it and ship it? A. Yes, sir.

Q. And have you up to the time during the time that you have been inspector in Oklahoma, have you examined and inspected those tank cars? A. Yes, sir.

Q. Have you examined and inspected the blended, where they blended with naphtha? A. Yes, sir.

Q. Where the naphtha is blended with casinghead gasoline? A. Yes, sir.

Q. And how do they ship their product? A. As gasoline.

By Mr. Swacker: Same objection and exception.

By the Court: Same *objection* and exception.

Q. Now let me ask you did these people ship this product as gasoline after December 2, 1916?

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial, the transaction being between third persons and having no connection with the Gulf Re-

fining Company and not shown to have been brought to the knowledge of the Gulf Refining Company and not being the best evidence of how they shipped and under what condition it was shipped.

By the Court: Well now if you are going to go on that of course that will force them to send down there and get their railroad records. Now you have your point on the law. That allows you your exception. I will sustain the objection and require them to send after them.

By Mr. Diggs: If the Court please I am not putting the words "best" in their strike out the word best and I will say hearsay.

By the Court: Very well.

Q. Now after December 2, 1916, you inspected that plant?

A. Yes, sir.

Q. Of the Franchot? A. Yes, sir.

Q. And were they shipping this commodity as gasoline after December 2, 1916?

A. They billed it that way, yes, sir.

Q. That is what I mean. They billed it as gasoline?

A. Yes, sir.

By Mr. Diggs: Same objection and exception.

By the Court: As to the other yes. I can see the philosophy, if a rate is ambiguous I can see the philosophy if there is ambiguity about the rate where whether that should be an honest difference and not only should a criminal action be based on it but a civil. That rule in cases like that they are first referred to the Interstate Commerce Commission for determination. Go ahead.

By Mr. Diggs: Let me suggest this idea to the Court: This character of evidence is introduced now for the purpose of showing we are guilty of a crime. Suppose we would transport this thing and we are charged with shipping this same stuff north or shipping it south by another name *became* somebody else didn't use the name described in the tariff they could switch round and make what they term a crime in one place and the right name to ship it in another direction. That seems to be the principal hardship.

Mr. Swacker: Suppose there was no ambiguity in the name?

The Court: Well, we will see if there is ambiguity. I am letting it in on the theory of the government now. Proceed with the evidence.

Q. Now Mr. League, have you inspected, during the course

of your investigations, in Oklahoma, the Totem Gasoline Company's plant at Jenks? No, sir.

Mr. Swacker: We made an admission on the Totem this morning subject to objection.

Q. Did you examine any plants at Jenks? Do you know where Jenks is? Yes, sir.

Q. Now, there is the Totem plant, the Oil State Gasoline Company, the Ajax Gasoline Company, the Tribes Gasoline Company and the Eagle. Do you remember any of those names? A. Yes, sir. The Ajax, Tribes and Eagle.

Q. You have examined the Ajax, Tribes and Eagle?

A. Yes, sir.

Q. Now as to the Tribes Gasoline Company, did you make any inspection of it—of the manner in which it makes its commodity?

Mr. Swacker: We will make this admission as to any of the plants that the witness may name that you contend that that is a fact, that the witness, if you ask him those questions, will testify the same, and that subject to our objection and exception.

Mr. Chambers: That the Tribes gasoline plant, the Eagle gasoline plant, the Oil State Gasoline plant—it is admitted that they, prior to December 2, 1916, and after December 2, 1916, shipped their commodity as gasoline.

The Court: That he would testify that. That is the blended commodity of naphtha and what he calls raw casinghead gasoline, that they shipped it.

Mr. Chambers: Up to May, 1919?

The Court: During the period covered, they shipped it as gasoline subject to the exceptions of incompetency and irrelevancy and hearsay, and things like that. That he would testify that as to the commodity, the blended commodity as naphtha and—

Mr. Chambers: Up to May 19—

The Court: On the theory that they shipped it as gasoline.

Mr. Swacker: Subject to our exceptions and objections.

The Court: Yes, sir, subject to the objection of competency and relevancy.

Mr. Green: And all the objections made before.

The Court: Yes, sir, and hearsay.

Mr. Chambers: The Mid-Co Gasoline Company, Consumers Gasoline Company—rather, the Consumers

Refining Company, Victor Gasoline Company, Tidal Gasoline Company, Jefferson Gasoline Company, Ohio Cities Gasoline Company, Gilliland Gasoline Company?

Mr. Swacker: Have you been there and inspected them?

A. All but the Gilliland.

Mr. Swacker: And you have inspected them likewise under the same circumstances?

A. Yes, sir.

Q. And during the time prior to December 2nd and after December 2nd, 1916, up to May 2nd, 1919, as far as the inspection,——

A. Yes, sir.

Mr. Swacker: We admit the testimony would be the same with reference to this as to the other, with the same objections.

The Court: All right.

Mr. Green: I would like to get the Court to instruct the stenographer to make the memorandum that all of the objections that were granted, reserved by the defendant to the first plant about which he testified, applied to all of these others, all of the exceptions.

The Court: All objections and exceptions apply to every one except that it was not the best evidence.

Mr. Green: Yes, sir.

*Cross Examination by Mr. Swacker.*

Q. Mr. League, have you with you a copy of the transportation regulations? A. Not in my immediate possession.

The Court: Now, it is 12 o'clock—go ahead, ask him.

Mr. Swacker: Is there any objection?

Mr. Chambers: Is it something we have got? We will give it to you if we have.

Q. Is this a copy of those regulations? A. Yes, sir.

Q. Will you look at it, Rule 1712, and read it?

Mr. Chambers: Is that one of the tariffs?

Mr. Swacker: No, sir. That is the transportation regulations that he has been testifying about he enforced.

Mr. Chambers: I thought he testified about other people shipping.

Mr. Swacker: He testified about his duties, and he enforced these rules.

A. This one that was in effect on September 1st, 1918, did not become effective until that date.

Q. Will you look at that rule and state, if you can, if there was any change in that rule, in 1712, at least in substance, as it appears there and previous issues?

Mr. Chambers: I object as not the best evidence.

By Mr. Swacker: If you will not concede that——

By Mr. Chambers: I don't know.

By the Court: You can find out what the rule is, you can find out what can be stipulated about that.

By Mr. Swacker: Mr. Gann says he will concede——

By Mr. Gann: I know what the rule is Mr. Chambers does not. My knowledge is not binding on him.

By Mr. Chambers: You are the man that knows, if you say it is alright, it is alright.

By Mr. Gann: The rule is alright.

Q. Will you read that rule please sir?

A. Do you want all of it?

Q. Let me see if it can be shortened?

By the Court: Now we will take a recess gentlemen of the jury and you will be permitted to separate under the usual instruction of the Court until one forty-five P. M. Court will now take a recess until one forty-five P. M.

(Whereupon Court took a recess until one forty-five P. M.)

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AFTERNOON SESSION.

1:45 o'clock P. M.

Whereupon Court met pursuant to adjournment. The Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the Clerk and all found to be present, and counsel for the plaintiff and counsel for the defendant, having announced they were ready to proceed with the trial of this case, the following proceedings were had, to-wit:

E. J. LEAGUE, recalled as a witness.

*Cross Examination (Resumed) by Mr. Swacker.*

Q. Mr. League, did you say it is your duty to see that all the safe transportation rules are enforced with respect to the shipment of the commodities we have been talking about?

A. Yes, sir.

Q. Now, I ask you to read the first paragraph from rule 1712?

A. This is a later edition. May I read from my own copy that was in effect at that time?

Q. To which time do you refer to? A. July, 1916.

Q. If there is any change in that item—I would like for you to read the rule as it stood from December 2, 1916, until this set of rules became effective July 15, 1918. I believe it became effective at a later date, did it not? The set of rules which you identified before adjournment were revised and issued as of July 15, 1918, did they not?

A. Yes, sir.

Q. And they became effective at a subsequent date to July 15, 1918, did they not? A. Yes, sir.

Q. What date? A. September 1, 1918.

Q. And those rules remained in force until May, 1919, did they?

A. Yes, sir.

Q. Now I would like for you to read the rules which were in force from December 2nd, 1916, which you have been testifying to and the rules that became effective thereafter so far as there may be any change in that paragraph.

A. Paragraph 1712, "All shipments of articles subject to these regulations offered for transportation in interstate commerce must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carriers classification and tariff governing."

Q. Now were there any differences in the rules, did you read the rule before 1918? A. Yes, sir.

Q. I was reading it here.

A. I don't think there was any change.

Q. Now look at rule 1868?

A. There is no such rule.

Q. 1873, I should have said: A. Yes, sir.

Q. Will you read the first paragraph of that rule?

A. "The revenue or other way bill prepared from the shipping order, and transfer billing to connecting carrier for dangerous articles in list, paragraph 1807 and for other articles not in the list, but properly offered for shipment as dangerous articles, must properly describe these articles by classification or tariff names, and state for less than carload shipments the color of label applied. For car load shipments they must show the kind of placards applied. The shipper's certificate must be in possession of the initial carrier when these endorsements are made on original billing."

Q. That is the original rule before 1918, isn't it?

A. Yes, sir.

Q. Now, will you look at the rule after 1918, and see what, if anything, was added?

Mr. Swacker: I think we might exclude that part that was added, it seems irrelevant.

Mr. Chambers: You can read it in if you want to.

Mr. Swacker: I will read it, but I am not going to offer it in evidence.

Any body can see it is irrelevant. For carload shipments they must show the kind of placards applied, and when the *lading* is not dangerous, but is properly described by one of the doubtful names, distinguished by an asterisk in the list, paragraph 1807, the billing for the car must be endorsed, "No placard required."

Q. That is the only change in that rule, is that right?

A. Yes, sir.

Q. There is another rule, is there, that indicates the character of placard that must be applied upon cars containing either raw casinghead gasoline or casinghead blended with naphtha?

A. Yes, sir.

Q. What rule is that?

A. Any particular placard that you refer to?

Q. Well yes—is there any placard required which is applicable to raw casinghead or casinghead blended with naphtha only, and which is prohibited to be used on any other commodity? A. Yes, sir.

Q. What is that placard? A. Dome placard.

Q. Now what are the words on that placard?

A. "Caution, do not remove this dome cover while interior pressure exists.

By the Court: Read that rule requiring that?

A. When the—

By Mr. Chambers: Which one are you reading from now 1914 or 1918?

A. 1914.

By the Court: Go ahead.

A. Reading: "When the condensate, blended or unblended, with other products, has a vapor tension as above defined, not exceeding ten pounds per square inch, and is shipped as "Gasoline" in an ordinary tank car, sixty pound test classed defined in Master Car Builder's association specification for tank cars, the safety valves of such car must be set to



operate at twenty-five pounds per square inch, with a tolerance of one pound above or below; and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to the samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or "casing-head gas" is produced and shipped in a blended or unblended state; and the requirement for construction of dome covers and valve setting at 25 pounds must be made effective not later than January 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than 20 degrees Fahrenheit."

Q. Was there any substantial change in that rule so far as the placarding was concerned by the 1918 rule? A. No, sir.

Q. Now in the copy of the rule that you have there will you say that first part that you read there when it is shipped as gasoline, that is the way it reads "when it is shipped as gasoline?" A. "And is shipped as gasoline?"

Q. Yes, "and is not the word gasoline" in quotation marks there? A. Yes, sir.

Q. You understand those quotation marks in the sense it is used in a sense, not the correct name but a name that is used—

By Mr. Chambers: We object to that as incompetent.

By the Court: What do you understand by the quotation marks. What are they put there for if you know, if you know why they are put there.

A. My thought that it was put in the quotation marks for the reason that the condensate from the natural gas sometimes is described as liquefied petroleum gas.

Q. Did you find anything else in the rules any other commodity which is described by the name in quotation marks than the one instance in all these rules? A. I do not recall.

Q. Now these rules deal with thousands of articles do they not? A. Yes, sir.

Q. But in a great many and in every instance so far as

you know they use the appropriate name without quotation marks, isn't that true? A. As near as I can now recall.

Q. Now you said on your direct examination that you call this commodity, gasoline, I want to ask if you do not make a mental reservation to yourself in doing that that it is not really gasoline but is commonly called that among those with whom you do business? A. No, sir.

Q. Don't you practically put those quotation marks in your mind when you call that gasoline? A. No, sir.

By Mr. Chambers: We object to that, I don't know what he means by that.

By Mr. Swacker: You don't, I think he does. He says he does, anyhow.

Q. Now will you look at the rule you have just read from after September 1, 1918, and read the paragraph beginning with "liquid condensate" and specify the change in the rule in that respect?

A. May I have your copy for that?

(Counsel hand paper to witness.)

A. "When the liquid condensate alone or blended with other petroleum products has a vapor pressure not exceeding ten pounds per square inch it must be described and shipped as gasoline, casinghead gasoline or casinghead naphtha."

By Mr. Swacker: The rest of it is the same "in tank cars of a certain description."

A. It must be shipped in metal barrels or drums complying with specification No. 5 or in ordinary tank cars sixty pounds test flash equipped with mechanical arrangement for closing dome covers etc.

Q. Now, will you look at the rule, I think it is number 1807, Rule 1807, and look under gasoline and read the note at the right hand end opposite that item?

A. Gasoline made by compressing natural gas or by blending liquefied petroleum gas with refinery gasoline or naphtha may be described and shipped as gasoline, provided the vapor pressure does not exceed ten pounds per square inch.

Q. The rule says it may be so described. Will you see if you can find any other rules where the article must be described as a certain thing, or can you say from your recollection that there are such other rules?

Mr. Chambers: We object to that as incompetent.

The Court: Well, he can ask if he knows of any other rule on it.

Mr. Chambers: I do not think it is material at all,

or competent. I take it that the Court was going to pass on the construction he was going to place.

The Court: Yes, but I want to find out if there was any other rule that pertained to how gasoline, what must be defined as gasoline in the shipment. I will permit him to direct his attention if he knows.

Q. Look right down the line there next below gasoline, —*nitro telulose*, read what the note requires in that case, what it says.

A. Two such items. Which do you want?

Q. *Nitro telulose* kept with solve. [Nitrocellulose, wet with solvent.]

Mr. Payne: I object. I don't see how that can possibly have any bearing on the case.

The Court: I think not. I sustain the objection. What is the object of that?

Mr. Swacker: The object is to show the Commerce Commission definitely uses language meaning what they say. According to what they mean, saying "may" as to one and "must" as to another.

The Court: I will not let you introduce that in evidence. In the argument you may refer to that and call that to the attention of the Court. The Court will construe that.

Mr. Swacker: The paper is in evidence, the only point is getting out the salient features to attract the Court's attention.

The Court: I have no objection to it being read for my benefit but not to go into the record. The stenographer will not take this down, and the jury will not consider it. You may read it now, but it is not to be taken down.

(Whereupon the witness read the paragraph mentioned.)

Q. Now, are there any number of other rules which are worded must.

A. There are.

The Court: Now, you will notice the word must applies to safety and the word may apply to designation may and might be, there might be a reason why they applied that to safety, they would consider it mandatory, a mandatory term. May means must in a great many statutes, while may is used as a permissive term, a great many statutes use it to mean must.

Mr. Swacker: Yes, sir, and we again call the attention to the fact that throughout these rules, that they don't

properly constitute in any sense of the tariffs or the rate regulations, and are only transportation rules, and we had the witness read the rule 1712 which imposes on these inspectors the duty of seeing the correct tariff designation is used. I intended to interrogate him with reference to the discharge of his duties in that regard.

Q. Now you said it was your duty to enforce these rules during the period between December 1916, and May 1918 on the shipments made by the Gypsy Company from Kiefer, Jenks and Drumright? A. Yes, sir.

Q. You saw the shipping orders did you that were tendered the carrier to cover the shipments that were made?

A. Yes, sir.

A. And did they invariably bear the stamp required by the rule you read to the extent that the dome cover placard had been applied which was to be applied on cars containing raw casinghead or casinghead blended with naphtha?

By Mr. Payne: I object to emphasizing the words raw casinghead and would like to ask the witness if the word "raw" casinghead is used anywhere in those regulations?

A. No, sir.

Q. You understood what I meant by raw casinghead did you not? A. Yes, sir.

Q. Where did you learn what that means, what the name raw casinghead applies to, I say where did you learn what it applies to? A. In my inspection work of the plant.

Q. Is it a name commonly applied to distinguish casinghead that has not been blended or casinghead that has been blended? A. Yes, sir.

Q. That is why and how you understood the name when it was used in the question? A. Yes, sir.

Q. Now will you answer the question please?

By the Court: Read the question.

(Question read by the Reporter: They object to

By the Court: They object to the word "raw" I will have you confine your language to the rule.

Q. Well the rule is rather lengthy; when the blended condensate of casing gas etc.

By Mr. Payne: May I suggest that they use the term casinghead gasoline alone or blended with other products?

By Mr. Swacker: Very well I will let the question be corrected to that extent. Do you understand the question?

A. Yes, sir.

Q. What is your answer to it?

A. All the shipping orders bore that stamp.

Q. So that any time you picked up a shipping order covering a car going from Kiefer, Jenks or Drumright to Port Arthur bearing that stamp you would know that car had casing-head in it, is that correct? A. Yes, sir.

Q. Did every car that you ever saw shipped from those places bear the placard you described required to be affixed to that traffic?

By Mr. Chambers: We admitted that some time ago.

By Mr. Swacker: You admitted it was a fact it bore it but I want to show as a fact he knew it.

A. Every loaded tank car did.

Q. You would not have let it go forward unless it did have that, is that correct? A. Yes, sir.

By the Court: Now who put those placards on there, whose duty was it to put them on there?

A. The shipper.

By the Court: Then they were turned over to the railroad company.

A. Yes, sir.

By the Court: And the agent of the railroad company who way-bills these shipments is governed by these same regulations is he not?

A. Yes, sir.

By the Court: And he is required to affix on his waybill under the rule that you read, a like stamp indicating this dome covered placard was attached to the cars, was not that true?

A. Yes, sir.

Q. Now under those circumstances when such a waybill would go in the audit office it would indicate that there was casinghead in that car?

By Mr. Payne: I object, he cannot say what would happen in the auditor's office unless he shows he *know* what was in the office.

By the Court: Yes, I sustain the objection.

By Mr. Swacker: I withdraw the question.

Q. Now have you Mr. League in your experience found instances with respect to other commodities in which there was a tariff naming a rate governing the commodity differing from the name used in the rules of the safety transportation regulations applicable to the commodities?

By Mr. Payne: I object to that——

By the Court: I don't think he has shown himself qualified to answer that.

Q. In the course of your duties as an inspector do you know of any controversy arising between yourself and Mr. Donovan the manager of the Gypsy Oil Company over an appropriate description to be used in shipping this product?

A. No, sir.

Q. Do you know of any controversy having arisen between Mr. Donovan and the inspector named Ennis?

By the Court: Of your own knowledge, not from hearsay.

A. No, sir.

Q. Do you know of a controversy between yourself and this inspector Ennis in respect to the mode of description?

A. Yes, sir.

Q. Will you state what that controversy was?

A. There was an exchange of ideas between——

By Mr. Payne: I anticipate that this, your Honor, is in reference to a conclusion of law and I think that Mr. Swacker should bring out the nature of the controversy first.

By the Court: Yes, sir.

By Mr. Swacker: My previous question indicated the nature of the controversy. A controversy as to the proper description to be used on the shipping orders.

By Mr. Payne: I think that is triable by the regulations themselves, not what this man or that man or the other man may think about it.

By the Court: On what theory do you claim that is admissible.

By Mr. Swacker: We desire to show that such a controversy arose and that it was submitted to the superior officer of both of these inspectors, who ruled in favor of the interpretation given by the Gypsy Company, and overruled the other inspectors. Now we don't say that that is controlling in any sense of determining what the commodity is, but we do say in the light of the evidence that has already been admitted as to the custom of calling the thing that it is relevant on that score.

By the Court: I sustain the objection.

By Mr. Swacker: Particularly on the question of intent. We say that if there was no concealment as has been shown by the shipping order; this witness has testi-



fied that it was evidenced always by the shipping orders that the commodity was casinghead, that it certainly negatives any intent to obtain an improper rate.

The Court: This is not the way to prove it. You want to prove by him that he or any officer of these bureaus advised that this was the proper way to bill it, I will let you prove that.

Mr. Swacker: I was getting to that. I was asking him what the controversy was.

The Court: No, that is not it. It don't make any difference whether they had a controversy or not, if there was any officer whose duty it was to advise them told them that was the way to bill it, I will let you prove that.

Q. Did you ever have any instructions from Colonel Dunn, the head of the Bureau of Explosives, to any question as to how this commodity should be billed?

The Court: No, not that, but what he told these people. It doesn't matter whether they had any instructions or not, but if they told them that was the way to bill it, I will let you show it. I mean, if any of these inspectors advised the Gypsy that that was the proper way to bill it, I will let you prove that.

Mr. Swacker: That is not exactly what happened. What happened was this, that this inspector would not be giving instructions to the Gypsy but he communicated to his chief, and his chief gave him instructions.

The Court: Well, I will exclude that.

Mr. Swacker: Exceptions, then.

The Court: That is not a matter for the jury. That is a matter for me.

Q. Mr. League, you are employed by the railroad companies are you not? A. By the Bureau of Explosives.

Q. And they are an agency of the railroad company, are they not?

A. I don't know just exactly their present status now.

Q. During the time we are talking about, except during the period of Federal control, was it not then an agency of the American Railway Association?

A. That is my understanding.

Q. And the same—and the American Railroad Association is an association composed of practically all of the railroads in the country? A. Yes, sir.

Q. And this inspection service was performed by the Bureau of Explosives as an agency for the railroad companies in that respect? A. Yes, sir.



Q. During the period of Federal control, was this agency continued by the United States government while it was operating the roads? A. That is my understanding.

Q. And who is at the head of this bureau?

A. Our chief inspector is Colonel D. W. Dunn.

Q. He is an United States Army officer? A. I think so.

Q. Do you know any one named Topping connected with that Bureau? A. Yes, sir.

Q. Who is he? A. Chief Assistant Inspector.

Q. I will ask you to look at the paper I am now handing you, and ask you if you can identify that as Mr. Topping's signature? A. Yes, sir.

Mr. Swacker: I would like to have that marked for identification. I don't think it is admissible at this time.

Q. Did you attend a meeting of casinghead producers in the summer of 1918 or the spring of 1918, between the casinghead producers and the Bureau of Explosives, a conference?

A. On May 11, 1918.

Q. Here in Tulsa? A. Yes, sir.

Q. I will ask you if you can state whether there was a large meeting of casinghead producers present at that meeting? A. Yes, sir.

Q. I will ask if it involved a large portion of the producers of casinghead in this vicinity, or a large portion of the producers in this vicinity? A. Yes, sir.

Q. Do you recall whether Mr. Donovan, the Manager of the Gypsy Gasoline plant, was at that meeting?

A. Yes, sir.

Q. Do you recall whether Mr. C. B. Ellis was at that meeting? A. Yes, sir.

Q. Do you recall whether any representatives of The Texas Company was at that meeting? A. I don't recall.

Q. Do you recall whether Mr. Jarvis was there?

A. I don't know.

Q. Who was there on behalf of the Bureau?

A. Of explosives?

Q. Yes? A. Mr. W. S. Topping, C. P. Beistle.

Q. Who is Mr. *Bisel*, connected with the Bureau?

A. The chief chemist

Q. Was Colonel Dunn there? A. No, sir.

Q. Can you tell me what the purpose of that meeting was?

A. A conference with the producers of casinghead gasoline.

Q. Well, with respect to the rules proposed to be recommended by the Bureau to the Interstate Commerce Commission? A. Yes, sir.

Q. I will ask you if you recall a discussion of that portion of rule 1824-K you read a while ago in the first edition reading "and is shipped as gasoline," and in the second rule reading "must be described as gasoline, casinghead gasoline or casinghead naphtha?"

Mr. Payne: I object, your Honor. I don't think that is legal.

The Court: I don't see how that would be competent.

Mr. Swacker: They have attempted to show by this witness what was common terminology.

The Court: No, just the practice of the companies, how they use it.

Q. Was there any discussion in that meeting—

Mr. Payne: We object to any discussion in the meeting. It was in reference to proposing an amended rule. Now, the amended rules themselves are the law and not what the discussion was in reference to putting it in. There may have been all kinds of opinions expressed.

Mr. Swacker: I am not asking this witness to testify to what the law was. I am asking him to testify the subject of discussion there in so far as it had anything to do with the name of this commodity.

The Court: I will permit you to show they discussed it but not what they said.

Mr. Swacker: Very well.

Q. Was there a discussion there of the name properly to be applied to this commodity? A. Yes, sir.

Mr. Swacker: I do not want to transgress your honor's ruling in that respect, I ask this question—

Q. Was objection made there that there was a divergence in nomenclature of this particular article as between the tariffs and the safety transportation rules—

Mr. Payne: I object to what further transpired at the meeting unless we are going to take up the entire meeting and the government to show things favorable to its side.

The Court: I permitted them to state what was discussed, but not what was said. That is a collateral matter and hearsay, would have to unfold before the jury everything to see the merit.

Mr. Swacker: I think that is correct. The only thing—I only think I am entitled to it, because the wit-

ness on direct examination went into this character of testimony as to what people called it.

Mr. Diggs: I suggest that the only theory on which the evidence of this witness was admitted this morning was for the purpose of showing how the people in this vicinity names this article—

The Court: No, how the trade, body of men.

Mr. Diggs: We have shown on these—we have shown all these producers or a majority were present or together discussing the proper name to apply to this article.

The Court: No, I will not permit that. I sustain the objection of the government.

Mr. Swacker: I except.

Mr. Payne: I don't object if you let the government go into it, if you will do that.

The Court: No, the government cannot go into it, and I will not permit him to state what he heard and discussed—what he heard them discuss there.

Mr. Swacker: I except.

Q. Now, Mr. League, in your experience in connection with inspecting this commodity throughout this territory, have you observed whether there is any uniformity in either the character or quantity of materials used in blending or whether there is great diversity?

A. There is great diversity.

Q. Both in the character of materials used to blend with casinghead and the quantity used, is that correct?

A. Yes, sir.

Q. What materials are used, if any, other than naphtha, using naphtha in its specific sense?

A. Kerosene, gas oil, fuel oil, crude and so-called distillates.

Q. Distillates of each of these, kerosene distillates and gas oil and distillates of other lower grade oils?

A. Yes, sir.

Q. Do you know, in a general way, what are the properties of crude oils denominated naphtha fractions? A. No, sir.

Q. Do you know what are the elements of which naphtha is composed? A. No, sir.

Q. Do you know anything concerning the usability of the various blends that you have referred to in their state when blended? A. And used as what?

Q. Well, for example, for gasoline stoves?

A. Yes, sir, I have burned those blends in stoves.

Q. Have you burned all the blends you have described in stoves?

A. I don't recall having burned the crude oil blend.

Q. You have burnt all other blends in stoves?

A. I think so.

Q. Are you familiar with the law of Oklahoma covering the inspection of gasoline? A. No, sir.

Q. When you burnt these blends were you examining or have you done that as an ordinary practice in your own home?

A. Neither.

Q. Neither? What was the circumstances in which you did burn some of the stuff or samples of each of them.

A. In making the vapor tension tests such as we inspectors were required to make we had to have hot water and at these outlying loading racks they sometimes erect a crude stove and burn different blends of stuff they ship. They do that to produce the heat to get their hot water.

Q. Do you know whether they use the blend they ship or instead of that of what is commonly known as drip?

A. They use the blend that they ship.

Q. Do you know whether the Gypsy Oil Company uses the blend it shipped for that purpose?

A. They use it to produce the heat but not in the stove.

Q. In a stove—not in a stove? A. No, sir.

Q. Do you know the specific quantity of blending material used in the plant that you have seen not used in a stove.

A. I can recall approximately perhaps.

Q. Take a particular instance and name some plant there, some time?

By Mr. Payne: I object, I don't see the relevancy of all this.

By the Court: Let's see what it is.

By Mr. Payne: I have no particular objection but it takes up time.

A. There is a certain plant in the Drumright district that uses the blend with fuel oil, said to be a fifty-fifty plant.

Q. Fifty-fifty plant? A. Yes, sir.

Q. You was told that was what the blend was?

A. Yes, sir.

Q. And that was the source of your information?

A. Yes, sir.

Q. Do you know how they perform the distillation tests of the gasoline? A. I don't know how it was done.

Q. Have you ever performed the distillation test of any material shipped by the Gypsy Oil Company? A. No, sir.

Q. Have you ever performed a distillation test of any unblended casinghead or seen one performed?

A. I do not recall that I have.

Q. Now, do you know where the unblended casinghead such as moved in this territory comes through here or goes through here to refineries?

By the Court: Of your own knowledge and experience.

Q. From your observations of the billing that you may have inspected? A. To the refinery?

Q. To the refiners? A. As far as I recall.

Q. Do you know why it goes to the refiners? A. Yes, sir.

Q. What is the reason it goes to refiners?

A. For further blending with some lower product.

Q. For what purpose? A. Equalizing the gravity.

Q. And why is that desirable to be done?

A. I know of no other reason than to increase the output.

Q. Well, isn't it to make it a finished gasoline?

A. I wouldn't say so.

Mr. Payne: I object, your honor. We have no objection to his testimony.

Mr. Swacker: Then why keep objecting and interrupting, if you don't object.

Mr. Payne: We don't refer to any specific case.

Q. Do you know whether a producer of raw—I mean unblended casinghead in the State of Oklahoma is permitted to sell that commodity in the state in which it is shipped when unblended as gasoline in this state? A. I don't know, sir.

Q. Then you don't know whether refiners may be doing that to comply with the law instead to enable them to sell this product as gasoline? A. I don't know, sir.

Q. Then you are just hazarding an opinion, when you say that you think it is to increase production? A. Yes, sir.

Q. And it has very substantially in the last few years increased the production of gasoline in the aggregate, hasn't it? A. Yes, sir.

Q. Two or three hundred million barrels a year, has it not? A. I have no idea.

Q. Well, now do you know of any other state, or of any state, I should say, which prohibits the sale of this unblended casinghead as gasoline?

A. I know of no state that does.

Q. You know of no state that does so? A. No, sir.

Q. In your inspections of the shipments of the Gypsy Oil Company, did Mr. Donovan always accord you any information you desired concerning the product, or did he, on the

contrary, endeavor to conceal anything in relation to it from you?

Mr. Payne: I object to that.

Mr. Swacker: I think I meant it led to show that anything he asked for, he told him.

Mr. Payne: No, that has nothing to do with the rate.

The Court: Yes. Objection sustained. You objected when they offered to prove that.

Mr. Swacker: Yes, that is right.

Q. What was the average gravity that you observed on the unblended casinghead shipped by the Gypsy Company from these three points that had been mentioned during the time mentioned? A. The unblended?

Q. Yes.

A. I do not recall inspecting any shipments of unblended casinghead gasoline that was shipped by the Gypsy Company from these plants.

Q. Were all the shipments that you inspected, from Jenks, blended?

Mr. Payne: I object, because the witness will have to remember the specific shipment.

The Court: If he knows that—if the inspections that he made there were blended—if he knows that to be a fact, he may state that. Not give his opinion and speculate on it.

Q. (Question read by the reporter.)

A. I do not now recall making any inspection of cars shipped from Jenks by the Gypsy Company.

Q. Do you recall inspecting any cars from Jenks?

A. Shipped by the Gypsy Company?

Q. Shipped by the Gypsy Company? A. No, sir.

Q. And none of your testimony relates to any cars shipped from Jenks by the Gypsy Oil Company is that correct?

A. That is correct.

By the Court: I don't think he named the Gypsy Oil Company this morning.

By Mr. Swacker: I am asking him about inspecting all of these plants.

By the Court: I noticed he did not name the Gypsy Oil Company this morning.

Q. What was the average gravity you observed on the blended material shipped by the Gypsy Company which you inspected, about what was it? A. About 72 or 73.

Q. Well, would that not be about the minimum?

A. I have seen cars with a lower gravity than that.

Q. And in particular cold weather and in extraordinary conditions?

A. Yes, sir, extraordinary conditions I have seen it average about 72 and 73.

Q. Average 72 or 73? A. Yes, sir.

Q. Now, you said in response to one question—that you have heard generally applied to this commodity, the name gasoline, isn't it a fact that you yourself expressly differentiate this unblended casinghead whenever it runs above ten pounds vapor pressure by calling it something else?

A. Yes, sir.

Q. What do you call it? A. Liquefied petroleum gas.

Q. Now, what is the practice in this regard around the plants; do they call that liquefied petroleum gas in speaking generally do they call that gasoline also or do they call it liquefied petroleum gas?

A. My observation has been that they call it gasoline.

Q. Then they make no such distinction as the tariff and regulations or the safety transportation regulations here make in denominating that by a particular name do they?

A. No, sir.

Q. They commonly call it gasoline? A. Yes, sir.

Q. Now, in answer to the last question you said that though these rules required when the commodity is over ten pounds vapor tension that it shall be called liquefied petroleum gas; that those with whom you came into contact in your business commonly called that gasoline; also, that is correct, isn't it? A. No, sir.

Q. I don't mean with respect to shipping but just in ordinary every day mention of it?

A. Among the railroad men and inspectors?

Q. I am not asking about the railroad men and inspectors, I am asking about the producers.

A. I didn't understand you to say that.

Q. You come in contact with producers more than you do railroad men, don't you? A. No, sir.

Q. Well, your duty is to be around among these plants with a good deal of frequency? A. Yes, sir.

Q. Now, referring to it in the vicinity of these plants, I understood you to say a few moments ago that notwithstanding the description required by these rules of liquefied petroleum gas when the vapor tension exceeded ten pounds that no distinction was made by the producer but they called that gasoline. A. Yes, sir.

Q. So far as your contact with it indicated?

A. Yes, sir.



Q. Now then that name, liquefied petroleum gas is a very proper name of the commodity? A. I should think so.

Q. And might with entire accuracy be applied to the commodity even though the vapor tension did not exceed ten pounds is that true? A. Aside from the shipping.

Q. I am speaking—I am not speaking of the shipping regulations—that is a very accurate denomination of the commodity? A. Yes, sir.

Q. Do you know other names used in reference to it?

A. Liquefied petroleum gas, casinghead gasoline are the only ones that I recall.

Q. Casinghead gas, have you heard that used very commonly?

A. Yes, sir, in the same sense that you would buy gas for an automobile.

Q. Just like people go up to a curb stand and call for gas instead of gasoline?

A. Yes, I understood it to be an abbreviation of the word gasoline.

Q. And you just assumed that to be an abbreviation of the word gasoline haven't you?

A. Well, I use it that way myself.

Q. Did you ever hear anybody else say that was the way they used it?

A. The manner in which they used it indicated they used it as an abbreviation.

Q. What is the manner they used it in to indicate that.

A. In speaking of tank cars of casinghead gas—there is no such thing, it is gasoline.

Q. You say there is no such thing as casinghead gas?

A. I said tank cars of casinghead gas, never saw it.

Q. There is such a thing as casinghead gas? A. Yes, sir.

Q. Just because somebody referred to tank cars containing a liquid as casinghead gas it is your conception that they are abbreviating the word gasoline? A. Yes, sir.

Q. Now, have you heard the blended commodity called by other names than gasoline? A. Blended with what?

Q. Well, have you heard any of the blended commodities called by any other name than by gasoline? A. Yes, sir.

Q. Well, now what are some of those other names, if more than one? A. Unrefined naphtha.

Q. What other names have you heard? Haven't you heard naphtha blend?

A. Yes, sir, blended gasoline, kerosene blend.

Q. Gas oil blend? A. Yes, sir.

Q. And those are more commonly used than the name gasoline when there is any effort to speak with any degree of accuracy, are they not?

A. Among the producers, perhaps so.

Q. That is, gasoline wouldn't import anything to them as to what the product was unless they knew what it was blended with, isn't that true? And if they wanted to speak with accuracy, they would say naphtha blend or kerosene blend, or whatever they might have in mind, is that true?

A. Yes, sir.

Q. Now, you state that the commodity shipped by the Gypsy was practically of the same character as that shipped by the other people from whom you got your general information that it was called gasoline. And you say practically—when you say practically all the same, you embrace within that all this wide variety of blends, is that true?

A. Of the naphtha blends, yes.

Q. And they may run all the way from 10 to 15 per cent content of naphtha up to 95 per cent content of naphtha, is not that true? A. They might.

Q. Well, it is a fact that in this community the blending is done just according to what the particular producer has in mind to do, and according to the gas he is using?

A. Yes, sir.

Q. With the consequence those blends range from a 25 per cent up to about 95 per cent of material other than casing-head? A. I think those figures will be approximately correct.

Q. And those who blend up to 95 per cent of the other material commonly blend with the object of marketing the resulting blend in that case, do they not?

A. I have always thought so.

Q. Now, do you know the vapor tension of commercial gasoline as sold on the market?

A. Ordinary gasoline or casinghead gasoline?

Q. I mean what is commonly sold for consumption, such as you might get at a garage for a car, or you might buy for a gasoline stove?

A. I have run quite a number of vapor tension tests on such material.

Q. Well, what did you observe to be the vapor tension to be found in such material?

A. Ranging from one pound, about one pound to perhaps seven pounds per square inch.

Q. You found it up as high as seven pounds per square inch? A. Yes, sir.

Q. That was quite unusual, however, the seven pounds per square inch, was it not?

A. In the limited experience of testing that particular kind of gasoline, yes, sir.

Q. What kind of gasoline was that by the way?

A. Same as you describe in your question ordinarily found at *at* garage.

Q. The particular one that runs 7 pounds what was that particular kind of gasoline?

A. It was as I recall now a blend of ordinary refined gasoline, with casinghead gasoline.

Q. Do you know what proportions the blends were?

A. No, sir.

Q. Did you ever make any tests of any of the materials shipped for the Gypsy Oil Company with a view of determining whether it was refined or unrefined? A. No, sir.

Q. Would you know how to make such a test?

A. No, sir.

Q. How small a blend of casinghead gas do you think you would be able to detect a blend with distilled gasoline, straight-run gasoline? A. I don't know.

Q. You have no idea how low you would be able to judge that? A. No, sir.

*Further Direct Examination by Mr. Payne.*

Q. You speak of having heard of a blend of casinghead gasoline and naphtha being called unrefined naphtha, who do you know ever called it such? A. The Gypsy Oil Company.

Q. Anyone other than the Gypsy Oil Company?

A. And their employees.

Q. And their employees? A. Yes, sir.

Q. Never heard anybody else call them unrefined naphtha called it unrefined naphtha, except the Gypsy and its employees, is that correct?

A. And others who was speaking of that particular commodity shipped by them.

Q. But not speaking of their own? A. No, sir.

Q. Referring to the different blends of casinghead gasoline with naphtha and kerosene and other blends when it is blended with naphtha how is it usually shipped on the billing by the shipper? A. Gasoline.

By Mr. Swacker: I object, incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Swacker: I except.

Q. When it is blended with kerosene how is it usually shipped?

By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Swacker: I except.

A. Gasoline.

Q. When it is blended with crude oil how is it usually shipped? A. Gasoline.

Q. Is it shipped—how about gas oil, did you say it was sometimes blended with gas oil? A. Yes, sir.

Q. How is it shipped then? A. Gasoline.

Q. Now coming back to the question of liquefied petroleum gas and gasoline did I understand you to say that generally speaking the casinghead gasoline producers would refer to their product as gasoline, is that correct?

A. In so far as—

Q. Assuming they did not know the vapor tension?

A. In so far as the relation between liquefied petroleum gas and gasoline, yes, sir.

Q. Would they or could they make any distinction between liquefied petroleum gas and gasoline until they had taken the vapor tension? A. Not accurately, no, sir.

Q. Not accurately. So that they would have to ascertain the vapor tension before they could determine as to whether it would be liquefied petroleum gas or gasoline for shipping purposes? A. Yes, sir.

Q. Now under the safety rules of the vapor tension is ten and one half pounds how would the product have to be shipped? A. Liquefied petroleum gas.

Q. Suppose it was ten pounds or under, how would it have to be shipped?

By Mr. Swacker: I object to that, I didn't bother with the other question but he is asking this witness to decide what your honor has got to instruct the jury.

Q. Well, how is it usually shipped?

By the Court: Yes, sir, how is it usually shipped?

Q. How is it usually shipped?

By the Court: I exclude all parts where he said ought to be shipped.

Q. Well, now, there is no *the* question about those rules using the word "must" in reference to liquified petroleum gas, is that correct? A. Yes, sir.

Q. That is, under the rules, the rules say that when the vapor tension is over ten pounds, that it must be shipped as liquified petroleum gas? A. Yes, sir.

Q. So far as your knowledge goes, has any one, other than the Gypsy Oil Company, shipped a blend of casinghead gasoline and naphtha by any other terms than liquefied petroleum gas and gasoline?

Mr. Swacker: I object to that, unless it is limited to Port Arthur, Texas, or some place where there are unrefined naphtha rates in force, as being incompetent, irrelevant and immaterial, and further, as not binding on the defendant, no connection being shown between defendant and these other parties.

The Court: I think you have gone far enough into that.

Q. You spoke of taking the vapor tension of ordinary gasoline. If I remember correctly, you said you found the vapor tension ranging from one to seven and one-half pounds, is that what you said?

A. I think seven pounds was the most.

Q. Seven pounds? A. Yes, sir.

Q. Now, a blend of casinghead gasoline and naphtha when shipped as gasoline, what is the range of the vapor tension from the shipments that you have tested?

A. Between six and ten pounds.

Q. Six to ten pounds? A. Yes, sir.

Q. You spoke of blends of casinghead gasoline and naphtha and casinghead gasoline and kerosene being shipped to refineries, such shipments as you have seen so shipped, how were they billed for transportation purposes?

A. As gasoline and unrefined naphtha.

Q. What refineries have you seen shipments of such a blend as unrefined naphtha made to?

Mr. Swacker: I object to that, as being irrelevant, incompetent and immaterial, and another effort to show exactly the same thing excluded a couple of minutes ago, unless he shows the rates or tariff permitted and under the description of gasoline, it is irrelevant.

The Court: No, it is a negative. The question is have you seen it.

Q. Have you seen it?

Mr. Payne: The witness stated on Mr. Swacker's examination that the blends were shipped to refineries, and I am asking the witness how such shipments as were sent to the refineries were billed, I asked him that, and he answered billed as gasoline and unrefined naphtha, and I asked him to what refineries he had seen such shipments billed as unrefined naphtha.

A. To the Gulf Refining Company at Port Arthur, Texas.

Q. Have you seen the bill or shipping orders describing the shipment consisting of the blend of casinghead gasoline and naphtha to any other refinery as unrefined naphtha?

Mr. Swacker: I object as incompetent, irrelevant and immaterial and not being shown that the tariff or classifications permitted such shipment.

The Court: Objection overruled.

Mr. Swacker: I except.

A. No, sir.

Q. You spoke of dome placards, special dome placards. The fact that a car bore special dome placards would be an indication, would it not, that the contents of the car consisted of some blend of casinghead gasoline? A. Yes, sir.

Q. I asked you about blended only. I didn't intend to limit my question to blended casinghead gasoline. The placing of dome placards would indicate that the car contained either casinghead gasoline or a blend of casinghead gasoline and something else, would it not? A. Yes, sir.

Q. When you spoke of raw casinghead gasoline, just what did you mean? A. Unblended.

Q. Did you mean to intimate, by calling it raw casinghead gasoline that it was in a crude or unrefined state?

A. No, sir.

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial. He stated the source of his knowledge of the names as one in use among the people.

The Court: I will overrule the objection. You may have an exception.

Mr. Swacker: I object, on the further ground, that the witness is not shown to be qualified to express any opinion as to whether anything is refined or unrefined.

The Court: I will let him answer.

Mr. Swacker: Exception.

The Witness: What is the question?

Mr. Payne: As to whether raw casinghead gasoline was an indication that it was crude or unrefined.

The Court: No that is not the question.

Mr. Payne: Read the question.

The Court: You asked if he meant to indicate. That is not the question. You asked him if he meant to indicate.

(Question read by the reporter as follows: "Q. Did you mean to intimate, by calling it raw casinghead gasoline, that it was in a crude or unrefined state.")

By the Court: There is lots of difference by him saying he meant and what he said it was.

Q. I will ask you to look through this at random and point out some of the other specific names of commodities that are in quotation marks in that book?

By Mr. Swacker: Just in the interest of saving time I will object to him attempting to [ ] that because that is not an interstate commerce publication.

By Mr. Payne: Are these the books you questioned the witness.

By Mr. Swacker: Yes.

By Mr. Payne: Then we are entitled to show what quotation marks are in there.

By Mr. Swacker: I had him identify the rules promulgated by the Interstate Commerce Commission. Now he is asking him to testify from a publication published by the bureau of explosives.

By the Court: That don't go to the jury anyway that is a matter for the enlightenment of court and the court will permit him to do that.

Q. I just want to show they are quoted in there. Any specific names that are put in quotation marks?

By the Court: Suppose you let him look over this. You need not take the time now but you can recall him for that purpose.

A. I have several right at hand.

By Mr. Swacker: What rules have you reference to?

A. 1621.

By Mr. Swacker: Those are explosives and not part of the inflammable regulations at all, isn't that true.

A. Yes, sir.

By Mr. Payne: What difference does that make?

By Mr. Swacker: All the difference in the world.

By the Court: Now what is the wording in rule 1621. That is under quotation marks.

A. Small arms percussion caps. Percussion fuses, combination fuses.

By Mr. Swacker: Your honor please, that is just a rule of instructions with regard to marking them on the outside of each box.

By the Court: Any other.

By Mr. Swacker: That is an official publication and quote the rules and you can see what it relates to.



A. Paragraph 18 refers to 36 "striking anywhere matches."

By Mr. Swacker: That is just a good illustration in support of my argument.

By the Court: 1836, what is that.

A. "Strike anywhere matches."

By Mr. Swacker: You have an old edition?

A. I have an old one, yes, sir.

By the Court: Any other?

A. I do not recall.

By Mr. Payne: Did you put these in evidence (referring to papers)?

By Mr. Swacker: You put them in evidence yourself.

*By Mr. Payne.*

Q. Referring to page 47? A. Yes, sir.

By Mr. Payne: Oh, we will waive that point, that is all.

*Further Cross Examination by Mr. Swacker.*

Q. Your last question and answer was that you were asked if you meant to intimate that the commodity was unrefined in the use of raw casinghead, and you said no, did you mean in saying no it was refined?

A. I spoke of it as raw gasoline, I had no thought whether it was refined or unrefined.

By Mr. Swacker: Exactly.

Q. You have never known any raw casinghead gasoline that refined at the time of shipment did you?

By the Court: What do you mean?

By Mr. Chambers: I think that is objectionable, the witness is not qualified to testify to that.

By the Court: I think you have gone far enough.

Q. Have you ever known of any raw gasoline at the time referred to as being in an unrefined state or having been refined? A. I don't recall that I did.

Q. Now with regard to this placard is that required to be placed on a car that may have been shipped by a refiner where this is perhaps only five per cent casinghead gasoline content in the blend?

A. My interpretation of the rule they must.

Q. No matter what percentage of casinghead may be in gasoline shipped that it requires that record?

A. Yes, sir, yes.

Q. What to your knowledge is the common practice with respect to gasoline shipped by refiners having a small percentage of casinghead as to whether or not they use that placard or the ordinary red inflammable placard?

A. As far as my knowledge goes all refiners who put any casinghead blend at all use the dome placards.

Q. What refiner do you know who makes a blend of five per cent casinghead who put dome cover placards on them?

A. I know of no such refiner.

Q. You don't know of any such refiner? A. No, sir.

Q. And have you tested for vapor tension cars moving from a refinery cars having as low as five per cent content of casinghead? A. Not that I know of.

Q. Well as a matter of fact your experience with reference to testing and inspecting cars containing casinghead are only such cars as are being shipped by a casinghead producer and have a very substantial amount of casinghead in the car. [A.] Mostly so.

Q. At least forty per cent or about? A. Yes, sir.

Q. And most of them considerably above forty per cent isn't that true?

A. I cannot say as to that. We are not interested in the percentage.

By the Court: Now you will have to get through with these witnesses when you are through with them.

By Mr. Swacker: Well, Mr. Payne opened that question.

By the Court: Was that on redirect, what he brought out. Now I am going to hold you to the rule.

Q. Can you say what is the common vapor tension of Gypsy shipment that you have observed?

A. They were all below ten pounds.

Q. Why—were they all very close to ten pounds?

A. The majority were, yes, sir, there were some that was considerably less, perhaps as low as five or six.

Q. But those were very rare cases? A. Yes, sir.

Q. And as a general rule would be around nine or ten pounds, that correct?

A. Yes, sir, eight and a half to ten pounds, yes.

Q. Do you know of any tariff rates on unrefined naphtha running from the Muskogee district to Coffeyville, Kansas?

A. No, sir.

By Mr. Payne: I object, he has to put the rates in by the tariff the same as we have to do.

By the Court: Yes.

By Mr. Payne: May I recall this witness for one or two additional question- I want to ask him.

By the Court: Well, now—

By Mr. Payne: I want to introduce these safety regulations certified to by the Secretary of the Interstate Commerce Commission and containing the regulations in force throughout the period.

By the Court: If they are certified to you can introduce that without the witness.

By Mr. Payne: I offer these at this time as Government's Exhibits 61, 62 and 63.

By Mr. Swacker: At this time we make no objection on the point of their competency but reserve the right to object to the legal effect if and when the court may determine to instruct the jury concerning any matters contained in those exhibits.

By the Court: Very well.

Q. Referring again to the rules relating to the dome placarding, were those dome placard- required for shipment for naphtha? A. No, sir.

Q. Were they required for any other commodity than casinghead gasoline alone, on casinghead gasoline blended with some other liquid? A. No, sir.

Q. That is all.

By the Court: Stand aside.

(Witness dismissed)

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And thereupon, S. R. SCOTT was produced, sworn and examined as a witness for and on behalf of the United States, and testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury.

A. S. R. Scott.

Q. Where do you live, Mr. Scott? A. Tulsa, Oklahoma.

Q. What is your business?

A. Inspector, Bureau of Explosives.

Q. How long have you been engaged in that business?

A. Since June 1, 1916, with the exception of a period of about 22 months I was in the army.

Q. Since June 1, 1916? A. 1916, yes, sir.

Q. What are your duties as inspector?

A. To inspect the manufacture and transportation of explosives and other dangerous articles.

Q. In connection with those duties, has it been incumbent upon you to inspect casinghead gasoline and test casinghead gasoline blended with other products? A. Yes, sir.

Q. Where have your duties called you, I mean by that what states have you—— A. State of Oklahoma.

Q. Your duties have been limited to the inspection of this material in the State of Oklahoma? A. Yes, sir.

Q. And in what particular places have you inspected casinghead gasoline and products that have been blended with it?

A. Wherever it is manufactured in the State of Oklahoma, the entire state.

Q. I wish you would, as near as you can, designate what places, giving the names.

A. I have inspected Drumright, Oilton, Kiefer, Glenn Pool, Jenks, Bixby, Leonard, Stone Bluff.

Q. That is, in all of those places they manufacture casinghead gasoline and they ship it from those places?

A. Yes, sir.

Q. Now, as—what plants have you inspected at Kiefer, Oklahoma?

A. I have inspected the Crosby and Gillespie, D. W. Franchot, Gypsy, Chestnut and Smith, Oklahoma Petroleum & Gasoline, Tulsa Gasoline.

Q. Are they at Kiefer?

A. They are located around Kiefer, yes, sir.

Q. And do they do their shipping from Kiefer?

A. From Kiefer and Glenn Pool.

Q. Have you—in the performance of your duties, have you inspected a great number of tank cars of casinghead gasoline and casinghead gasoline blended with other products?

A. Yes, sir.

Q. Well, can you estimate about the number of tank cars you have inspected in your experience there?

A. From April 1, 1919, until December 31, 1919, I inspected approximately five hundred and eighty tanks.

Mr. Swacker: 1919, was that?

A. Yes, sir.

Mr. Swacker: This is all subsequent to the indictment.

Q. I did not get the first date. A. April 1, 1919.

Q. Well, now, did you inspect any cars at these various places that you have named prior to April 1, 1918?

A. Yes, sir.

Q. And what were the periods of time you inspected them?

A. From June 1, 1916, until September 17, 1917.

Q. And then you went away?

A. Yes, sir, I went to the army.

Q. And returned? A. April 1, 1919.

Q. April 1, 1919, and went back in the same employment?

A. Yes, sir.

Q. Are you familiar with the character of the shipments made by the Gypsy Oil Company at Kiefer? A. Yes, sir.

Q. Are you familiar with the character of the commodities, made—the shipments made by the Gypsy Oil Company at Drumright? A. Yes, sir.

Q. Are you familiar with the character of commodities of shipments by the Gypsy Oil Company at Jenks?

A. Yes, sir.

Q. Have you inspected a number of their cars?

A. Yes, sir.

Q. Now, prior to the time you went away, what would you say was the number of cars that you have inspected of these commodities, the casinghead gasoline and the casinghead gasoline blended with other commodities?

A. Of the Gypsy Company?

Q. Those of everybody?

A. Would be about the same proportion as the past year.

Q. You think the proportion would be just about the same?

A. Average about fifteen to twenty tanks a week.

Q. Do you know what the Gypsy Oil Company, what their commodity they shipped from Kiefer and Drumright consisted of?

A. Casinghead gasoline blended with naphtha.

Q. And that was the same at Drumright? A. Yes, sir.

Q. And what was the character of the commodity that they shipped from Jenks? A. Raw, unblended.

Q. Unblended casinghead gasoline? A. Yes, sir.

Mr. Swacker: What was your first answer?

A. Raw.

Q. Well, when you say raw, do you mean casinghead gasoline as it is brought, produced at the compression plant?

A. Yes, sir.

Q. Now, are all of these casinghead plants that you have inspected, are they all—is their product obtained, produced from the compression method or system?

A. With the exception of a few who obtain it by absorption.

Q. Just incidentally, the absorption is generally the gasoline obtained from the natural gas and not from the casinghead gas? A. Yes, sir.

Q. That is the absorption gasoline, is it? A. Yes, sir.

Q. Am I wrong in saying that the substance obtained from the casinghead plant you call casinghead gasoline, the substance you get from the absorption plant, is that called absorption gasoline or natural gas gasoline?

A. Natural gas gasoline or absorption.

Q. And then the gasoline that you get from the refinery, you call that refinery gasoline, is it? A. Yes, sir.

Q. In other words, you designate the gasoline from the name of the method by which it is produced? A. Yes, sir.

Q. Now, did these other plants that you spoke of, did they blend their casinghead gasoline generally with naphtha?

A. Yes, sir.

Q. That is your understanding? A. Yes, sir.

Q. Prior to December 2nd, 1916, do you know how the Gypsy from Drumright, Jenks and this other place, Kiefer, do you know how they billed their commodity, I mean the name under which they shipped it?

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial. We have admitted that about five times. It has been proven by half a dozen witnesses.

The Court: Why can't you reserve your same exception if they want to put it in?

Mr. Diggs: It is already in the record.

By Mr. Chambers: Let me—I may have misled this witness and you may have a wrong idea. I understand that Jenks and Drumright did not come in—that is you people, the Gypsy, did not ship from there until sometime in 1917 so I will have to limit that question to Kiefer prior to December 2, 1916?

By Mr. Swacker: We make the same objection, it is incompetent, irrelevant and immaterial.

By the Court. Now, what is the question.

By Mr. Chambers: The question is as to what designated name if you know prior to December 2nd, 1916.

By the Court: They have admitted they shipped it in that name.

By Mr. Chambers: I was simply proving those same facts by another witness.

By the Court: They have admitted it in the record as a fact. They shipped it that way. They reserved their objection to it, that is a relevant fact.

By Mr. Chambers: Will you permit me to say I had not taken that matter into consideration when I asked the



question is all. Now, if that is an admission that they shipped it as gasoline that is satisfactory.

By the Court: They have admitted it but they claim it is irrelevant and reserve the right to strike it out if the court so sees fit.

Q. What other places besides Kiefer, Jenks and Drumright was this commodity where casinghead gasoline is blended with naphtha, what other places and what other plants have you inspected and know the character and know the designated term by which it was shipped in Oklahoma?

A. Crosbie and Gillespie at Kiefer.

Q. We are eliminating Kiefer, Jenks and Drumright, what other places?

By the Court: I confine this to how it was known, what the practice was in the commercial world and the railroad world under the safety rules what they call it when they ship it and the practice.

By Mr. Chambers: If he knows.

By Mr. Swacker: I want an exception on the grounds he has not been qualified.

By the Court: Yes, they will have to qualify him and the practice under their bureau of inspection and then if he knows the practice in dealing with a railroad—

By Mr. Swacker: We admit his qualifications as an inspector under the safety regulations but object to him testifying on any other grounds unless they qualify him and I can see if he testifies on the grounds of his relations to the railroad world we are getting into the tariff proposition which your honor has excluded.

Q. What places do you know of this commodity—wherein the gasoline is blended with naphtha, you know the designated name by which—

By the Court: No, you will have to qualify him first how many places have you inspected during the period you have both before and after the war how many places have you inspected?

A. Kiefer, Glenn Pool, Jenks, Bixby, Stone Bluff, Leonard, Muskogee, Ardmore, Cleveland, Oilton, Cushing, Yale, Covington, Gary—

By the Court: Now in this business have you been brought into contact so as to know the terms they use when they sell this commodity and the names they call it by?

A. Only the names under which they ship it.



Q. Now then, in these various places that you have stated to the court in all of those place- they ship casinghead gasoline blended with naphtha? A. Naphtha and kerosene.

Q. Naphtha and kerosene? A. Yes, sir.

Q. Now then, what is the name under which these various plants—

By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

By the Court: I don't think this witness comes under the rule. Now this man Hays when he came in he showed he had a central selling agency and he sold and he was dealing with the commercial world. He was giving the instructions. That is the testimony.

By Mr. Chambers: I take it that these other people necessarily if they were shipping it were either selling it or dealing with the commercial world.

By the Court: All he knows is just how they shipped it.

By Mr. Chambers: That is one of the branches of the commercial business.

By the Court: This other is in here, I don't believe I will permit this witness upon the qualifications that he makes to testify.

Q. Does the performance of your duties bring you into contact with the people that manufacture casinghead gasoline?

A. Yes, sir.

Q. Do you have occasion to go through their plants and see the methods by which they manufacture these products?

A. Yes, sir.

Q. Do you talk with them with reference to what is the name of the product which they manufacture? A. Yes, sir.

Q. I will ask you to state what is the designated term by which they refer to this particular commodity and these various blends.

By Mr. Swacker: I object, irrelevant and immaterial and there is no connection shown in what respect they refer to it. If they are referring to it in connection with his functions that of course is limited to the safe transportation regulations.

By the Court: In what way would you be talking to them?

A. When they give it a name and call it?

By the Court: Yes?

A. I am required to find out the pressure they use as to

low and high stage, whether it is blended or unblended, whether it is steamed, temperature of the steam, whether the plant is provided with appliances, storage facilities, storage capacity, and

By the Court: And it is in that capacity you come in contact with them and talk with them?

A. Yes, sir.

By the Court: I will let him testify.

Q. Now what do they call it? A. Gasoline.

Q. Was this the name they called it prior to December 2, and after December 2, 1916?

By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

By the Court: Very well he may answer. It was the same product?

A. Yes, sir.

By Mr. Chambers: As far as I can think of now that is all.

By the Court: Well, you had better know, I am going to stop this chaffing around.

By Mr. Chambers: Well, I am thinking as hard as I can.

By the Court: Take the witness.

*Cross Examination by Mr. Swacker.*

Q. Have you heard them call it by other names also, such as naphtha blend, kerosene blend, gas oil blend, names such as that?

A. They have described it to me in the plant as being blended with naphtha, blended with kerosene, blended with fuel oil or whatever the blend may be. Raw as they spoke of it, unblended.

By Mr. Swacker: That is all.

(Witness excused)

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Whereupon, BARNHART, a witness on behalf of the Government, having been first duly sworn, according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination of Mr. Barnhart by Mr. Chambers.*

Q. What are your initials, Mr. Barnhart? A. W. H.

Q. You live at Kiefer? A. Yes, sir.

Q. What business are you in?

A. I have got charge of the D. W. Franchot's plant and oil fields.

Q. What is the character or kind of plant that Franchot has? A. A gasoline plant.

Q. Do you produce gasoline and casinghead gas?

A. Yes, sir.

Q. And what do you call it? A. Gasoline.

Q. Now, then, do your duties—you tell me what you have to do with the manufacture of this gasoline.

A. Well, we compress it, heat it and cool it.

Q. Do you oversee that, see that it is attended to, are you familiar with all of the processes from which the commodity comes from the well up to the production of the commodity? A. Yes, sir, I have charge of it.

Q. And how long have you been in that business?

A. Well, let's see, about five years?

Q. About five years? A. Yes, sir.

Q. And with this same company at the same place?

A. Yes, sir.

Q. And do you ship the commodity that you manufacture and the casinghead gasoline before it is blended, or do you then blend it with other products? A. We don't blend.

Mr. Diggs: To which we object, as incompetent, irrelevant and immaterial, and hearsay, as against this defendant, and I don't want to keep making these objections. Subject to the motion to strike out.

The Court: Yes, go ahead.

Q. You say you don't blend it? A. I don't. I weather it.

Q. You weather it? A. Yes, sir.

Q. Do you ship it before you weather it? A. No.

Q. You don't ship it where it is above the ten pound vapor? A. No.

Q. You weather it? A. Yes, sir.

Q. And then you ship it? A. Yes, sir.

Q. And by weathering it—I don't think it is necessary to go into that process for it is merely exposing it to the weather.

Mr. Swacker: The record already shows.

Q. It is just exposing it to the atmosphere until the vapor pressure gets down to below the ten pounds? A. Yes, sir.

Q. And then you ship it. Now, where do you ship it?

A. Well, different places; mostly to the Interstate Oil Company at LaCrosse, Wisconsin.

Q. And are there other plants of that character that you are familiar with?

A. Well, there is some that I have been in; I haven't got charge of them, and I don't know anything about them.

Q. Now, how do you designate—what name do you ship it under when you ship it? A. Gasoline.

Q. Do you sell it to the people up in Wisconsin?

A. Yes, sir.

Q. You sell it to them?

A. Yes, sir; the company does; they give me orders.

Q. And they sell it on orders from the company up there?

A. Yes, sir.

Q. And do you take the gravity of this commodity after it has been weathered? A. Yes, sir.

Q. And what would you say was the general—generally speaking, what is the gravity?

A. Well, anyways from seventy to seventy-five; it ain't all the same.

Q. From seventy to seventy-five gravity? A. Yes, sir.

Q. And do you take the color of it? A. Yes, sir.

Q. And what is the color of it? A. White.

Q. You mean by that, it is water white? A. Yes, sir.

Q. White as compared with water, and it is the same color as water? A. Yes, sir.

Q. Do you say that from your just naturally looking at it, or do you take a test of it?

A. I just look at it with a fair glass.

Q. This has been your practice, what you testified to, during the five years that you have been there?

A. Well, now, I haven't shipped gasoline five years. I have helped to make it that long, but I haven't shipped it only but about a year and a half.

Q. Well, do you know how it was shipped before that?

A. Well, I had nothing to do with it. I couldn't say. I am pretty sure it was shipped as gasoline; of course, it always has been.

Mr. Chambers: I believe that is all.

*Cross Examination by Mr. Diggs.*

Q. Did you select the name under which you shipped the commodity you have described or did you ship it according to the direction of other you said you shipped it according to the direction of others? A. What is that.

By the Court: What caused you to designate the name gasoline to that.

A. Well, that is my instructions to ship it that way.

Q. You don't select the name?

A. Of course it is gasoline, what I call gasoline.

Q. That is what you call gasoline?

By the Court: Who instructed you to do that?

A. From the office here, G. W. Franchot, G. W. Franchot's office.

Q. How long have you been in the shipping business?

A. What?

Q. How long have you been in the shipping business?

A. About a year and a half.

Q. Is the article you shipped to Wisconsin as gasoline there is there any other term or name under which you could ship it to the point you did ship it to of your own knowledge?

A. There ain't any that I know of.

Q. That is the only name you know of under which that particular product of the company can be shipped to the point you shipped? A. Yes, sir.

By the Court: Did you ever investigate to see?

A. Well, no, I did not.

By the Court: That is proving your negative without laying the foundation.

By Mr. Diggs: I am proving more to show his knowledge bearing on his knowledge of the facts, that is all.

*Further Direct by Mr. Chambers.*

Q. Who was in this plant, superintendent before you?

A. A fellow by the name of Charles Show.

By the Court: Now, as to the rates to these different points this expert can go out and make memorandum of that and return into court and read it into the record showing the fact each side ought to agree to that. They are entitled to have it in here the way this rate is here to these points and then we can see if it is gasoline or unrefined naphtha and they should go on and say which it is and the expert ought to get it up and you ought to be able to agree to that.

By Mr. Gann: There seems to be an impression in this trial the shipper cannot name the commodity any name except the name designated in the tariff and rules and it has always been the custom for the shipper to designate whatever commodity it is and the duty of the railroad company to apply that tariff to the commodity so designated.

Mr. Swacker: Your honor has suggested to us that we would have to produce proof concerning the rate.

The Court: Now, to my mind, a man who is not a

rate man says he don't know. That wouldn't prove anything. They ought to allow this Interstate Commerce rate man to say what it is and put it in the record.

Mr. Swacker: Our contention was that the only way it would have been competent evidence would be if they had laid a foundation by showing that there was a choice of rates. Your honor puts it up to us to show all the rates.

The Court: You have your exceptions.

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And thereupon SID HOUSTON OTEY, produced, sworn and examined as a witness for and on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your name to the jury. A. Sid Houston Otey.

Q. What is your business, Mr. Otey? A. Inspector.

Q. Inspector of what, and where? A. In the laboratory.

Q. Where? A. Where?

Q. Who are you employed by? A. By the Gulf Company.

The Court: Whereabouts?

A. Port Arthur.

Q. The Gulf Refining Company at Port Arthur, you are an inspector in the laboratory? A. In the laboratory.

Q. Mr. Otey, can you state what was shipped from Port Arthur to Kiefer, Oklahoma, consigned to the Gypsy Oil Company, Gasoline Department, from Port Arthur during the period from December 2, 1916, to May 31, 1919?

A. State what grade of oil?

Mr. Swacker: Just a moment. I object. This witness isn't even shown to have anything to do with shipping, but it has been testified to by everybody that naphtha was the commodity brought up to this place.

Q. I am asking him if he knows what it was, what was shipped up there for blending.

The Court: If he knows, he may answer that.

+ A. Naphtha.

Q. How was that naphtha designated upon your—upon the records of the Gulf Refining Company?

Mr. Diggs: I object to that as incompetent, irrelevant and immaterial, and the witness not shown that he knows anything concerning the records of the Gulf Refining Company.

The Court: Well, if he knows. What are you asking him about now?

Mr. Payne: I am asking him about shipments of naphtha.

The Court: From Port Arthur to Kiefer and Jenks?

Mr. Payne: Yes, sir.

Mr. Diggs: We object, on the further ground, we are not changed with any offense in this indictment of the material shipped from Port Arthur up here.

The Court: This is the records of the defendant now. Go ahead. Let him introduce that.

A. What do you mean? I didn't understand that.

Q. I asked you what was shipped north to Kiefer?

A. Naphtha.

Mr. Payne: Did the reporter mark this as Government's Exhibit 64?

Q. Referring to Government's Exhibit 64, will you state if that is in your handwriting? A. It is.

Q. Where it is an original record of the Gulf Refining Company? A. Yes, sir.

Q. Made in the regular course of business? A. It is.

The Court: Now, when did you make that?

A. This was made on Thursday, April 11, 1918.

The Court: How come you to make that?

A. It is our daily form. There are three of them.

The Court: Now, what does your daily form represent?

A. It represents our day's work by the eight hours.

The Court: Now, whose duty was it to make up that form?

A. It was mine, whoever was on this shift. You see, there are three shifts, and I got this one.

The Court: You make the entries in the performance of your duties as an inspector?

A. I did, yes, sir.

The Court: Go ahead.

Q. State the circumstances under which these sheets were made here, why they were made, and what they show, in general.

A. Why, this is just a copy of the daily routine work.

The Court: Let me have that. Now, he has already testified that these were the records made in the process



of the daily business. Now, I will let you take up each item, and ask what that is and explain what that is, if you want to.

Mr. Swacker: My objection runs principally—we say it is naphtha and they say it is naphtha. There is no dispute but what it is naphtha.

The Court: I don't know what they want to introduce it for, and I was pointing out the way to get it in the record. What is it you want to introduce now?

Mr. Payne: For the purpose of showing that the naphtha shipped to Kiefer and Drumright for blending there was a refined naphtha.

Mr. Swacker: We will admit that it was a treated naphtha, and would be a sufficiently treated naphtha for some purposes, and we are perfectly willing to admit the exact character of it.

By Mr. Payne: Will you admit it was refined as naphtha is ever refined?

By Mr. Swacker: No sir, and this witness is not qualified to state this.

By the Court: Very well, ask him if he knows.

By Mr. Swacker: This witness would not have anything to determine how—

By the Court: Yes, but he can take those items and that sheet as a basis, he has identified it as to what it is.

By Mr. Swacker: The evidence would be as to what the witness would say.

By the Court: But after he had laid the predicate ask the question.

Q. Referring to the items here in the first column, painters naphtha will you state what the number means under the heading?

By Mr. Diggs: We object to him stating what it means but he may state what it is.

Q. Explain what your record is?

A. The next number under the—

Q. No what the number in the next column under that?

A. That is the number of the tank.

By Mr. Payne: I don't want to lead him—

By the Court: Go ahead and lead him.

Q. Do you—does this sheet show the result of the test of the oil in that tank?

By the Court: No you cannot ask him that because that sheet cannot be introduced to prove that.

By Mr. Diggs: May I interrupt and ask the witness a question which I understand to be a fact. Is that in your handwriting?

A. Yes, sir.

By Mr. Diggs: Did you make it or copy it from some other record?

A. No, sir, I copied it right down as I took it.

By Mr. Diggs: You made that at the time you took it?

A. Yes, sir, at the time it was taken.

Q. What was your duties, Mr. Otey?

A. Duties in the laboratory.

Q. What did you do in the laboratory?

A. All shipments were up to me for inspection.

Q. What did you inspect them for, what kind of inspection or test did you make?

A. It was gravity, color and distillation.

Q. Gravity, color and distillation? A. Yes, sir.

By the Court: Now take this, look at that and tell what the color, gravity and distillation tests of that car was, unless they will admit that and save time by agreeing to what that shows so it may be considered in *evi-* for what it shows. You will have to proceed, give him that to refresh his recollection.

By Mr. Swacker: We will not admit this isolated car but perfectly willing for the witness to tell of his experience in the shipping out cars—

By the Court: Go ahead, take that one now you know how to get at it. Go ahead and proceed.

Q. Where would you get the samples from which you would make these tests, or with which you made the test?

A. From the sample boy.

Q. What would the sample boy do, where would he get the samples? A. He would get them from the tank.

Q. And you would make a test of it? A. Yes, sir.

Q. And then you would make this entry as showing the material or the kind of oil in that tank. is that correct?

A. Yes, sir, referring to the test of it.

Q. Referring to that sheet, I will ask you if, according to your work that day, your distillation tests that the oil in tank 338 was painters' naphtha?

Mr. Swacker: I object. The witness attempting to answer. It is apparent he knows nothing about where the

stuff he tested came from; whether from 838. All he knows is about the sample.

The Court: I will overrule the objection. The evidence is, and there is other evidence in the record to show that the system was that the sample would be taken in there to be examined. He testified he examined it in due course.

Mr. Diggs: The further objection that the witness not being shown competent to testify as to the nature of the articles tested, but only put down a list of certain things.

The Court: That is as far as I will let them go for the present. They will have to show that he is an expert and knows what that means.

Mr. Payne: The Gulf Refining Company considered him competent to do that work. I think that would be sufficient.

The Court: Well, it is your duty to ask him.

Q. Did you make your test under general instructions as to how the tests should be made? A. Yes, sir.

Q. You made an entry there painters' naphtha, what was your instructions?

Mr. Swacker: I object ho him attempting to lead.

The Court: Let him get his question in the record. Then I will hear your objection.

Q. What was your instruction with reference to designating a particular oil as to painters' naphtha?

A. Why, it was no more than just—well—

Mr. Swacker: Did you have any instructions?

A. Well, now, wait a minute. Those tanks, they didn't always have the same kind of stuff in them.

Q. On that day?

A. They may have been painters' naphtha, or it may have been a low grade of gasoline, or it may have been some unrefined stuff or some bad stuff, I can not say what was in it on that day no more than what the gravity was and the color.

Q. Now, I ask you what your instructions were, and I call upon the court to instruct the witness to answer.

The Court: Yes. Answer the question.

A. Well, it is just as I said, we had orders to mark 838 painters' naphtha.

Q. It was tank 838? A. 838.

Q. Regardless of your distillation test?

A. Regardless of our distillation test, the gravity, or anything.

Q. State the gravity and the color of the painters' naphtha in tank 838 on that day as shown by your test?

A. Why, 55.6 and 25 plus.

Q. The gravity is 55.6? A. 55.6.

Q. And the color is 25 plus? A. 25 plus.

Q. Referring to an item on the second page of this exhibit, reading "Painters naphtha. tank 838, car 2187, order number, will you state what that indicates?

Mr. Swacker: Now, I would like to make an objection to this method of examination. The court has ruled that paper is not proper evidence, and the prosecuting officer is simply reading items from it, incorporating them into the question, which is exactly the same as if the paper was put in evidence.

The Court: He can show him that and ask him what that means.

Mr. Swacker: He is reading the contents of the paper into the record.

The Court: I will permit him to do that.

Mr. Swacker: Exception.

Q. What does that order number there indicate to you?

A. Why, no more than every tank car that naphtha had an order number.

Q. And now these cars containing painters' naphtha from tank No. 848 were shipped out of Port Arthur on these orders? That correct?

A. Well, now wait a minute, we have some card slips on these things and a copy of the order number and the car slips on these shipped.

Q. That is the regular course of business?

A. Yes, sir. And on the car slips it is signed and these are, now whether that was shipped on that order number or not I cannot swear to it.

By the Court: Who signed the car slips, [A.] the chances I did and maybe somebody else.

Q. Do you know what order 11348 was? A. No, sir.

Q. Do you know of your own knowledge what was generally shipped to Oklahoma points between Kiefer and Drumright for blending purposes up there?

By Mr. Diggs: To which we object, as being incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Diggs: I except.

By the Court: If he knows he may answer.

A. Ask that again I did not quite get it.

By the Court: Do you know of your own knowledge what was shipped from the plant, the refinery at Port Arthur to points in Oklahoma, Kiefer, and Drumright.

By Mr. Diggs: If that is the question I have no objection he asked him for the purpose of blending. I have no objection to the point these cars were shipped to.

By Mr. Payne: I don't make any point on that. There is plenty of evidence on that.

By the Court: Answer the question I asked you, what was the commodity shipped there.

A. It was naphtha.

Q. What kind of naphtha?

By Mr. Diggs: I object, the witness has not show himself qualified.

By the Court: Are you a chemist?

A. No, I am not.

The Court: What experience have you ever had?

A. None.

The Court: What have you been doing?

A. Inspector.

Mr. Swacker: I said I had no objection to his stating what the test showed, by the test. He can state what the material was in a methmathical way, as disclosed by the tests he made.

The Court: I will let you prove by him what they did with it. Where it came from, and what was done with it, if he knows.

Mr. Payne: I doubt if this witness knows.

Q. Do you know the processes by which this naphtha that was shipped to Kiefer and Drumright had gone through in the plant? A. No, sir.

The Court: I think that is as far as he knows.

Mr. Payne: He is in the laboratory, your honor.

Q. I show you Government's Exhibit Number 65, being a telegram signed Taber, addressed to Tryon, Port Arthur, dated March 24, 1917, and will ask if you have ever seen that.

Mr. Swacker: I object to the question.

The Court: Wait until he offers it in evidence. Go ahead.

A. I never did see it before.

Q. Do you know what the order number from the Gypsy Company calling for certain northbound shipments to Kiefer and Drumright was?

A. The order 7626, I recall that.

Q. That was to where?

A. I think that was to Kiefer. I am almost positive of that, because we had that nearly every day.

Mr. Swacker: I am perfectly willing to have that put in evidence, and admit that such a telegram was sent from Tabor to Tryon, the manager of the Port Arthur plant; that that particular telegram was sent.

Mr. Payne: Do you also admit that the cars that were shipped to Drumright were shipped in pursuance of that order?

Mr. Swacker: Yes, sir. As I said at the beginning, I will admit that we shipped a car of naphtha, such as the witness may say was the common gravity of it, to these points of origin here, regularly, on that order. I don't see what more can possibly be proved by attempting to associate this sheet with that order.

Q. Is that the order number for that order?

Mr. Swacker: Well, he says he has never seen that paper.

Mr. Payne: Do you admit that is the order number, 1138?

Mr. Swacker: I am not going to admit it, for the purpose of encumbering the record with a lot of figures.

The Court: Let it go in. He agrees it may be introduced that far.

Q. Where did you get the order number shown on this sheet of April 11, order number 11348, showing painters' naphtha as in cars 2187 and the three following?

Mr. Swacker: I beg to object to that same statement over and over again, "showing painters' naphtha" in certain cars, and so forth.

The Court: I will overrule the objection. You may have your exception. Go ahead.

A. What is that again?

Q. How do you know what the order number was?

A. From the car slips.

The Court: We are getting along mighty slow.

Mr. Swacker: If the sheets could have any possible competency, I would admit it in evidence. If it is going to be received in evidence to prove any particular com-



modity purporting to be shipped by that name, there appears on the sheet the painters' naphtha and the unrefined naphtha, if it proves one, it proves the other. We are willing for the sheets to be introduced, to be admitted in evidence, if it is to be treated in one way or the other.

The Court: If the sheet goes in, it goes in for all purposes shown by it unless restricted by the court.

Mr. Swacker: I was not objecting to its being introduced, as being an instrument purporting by this witness—

The Court: I am not so sure but what it would be competent, anyway, as a record, and you can read it, and you can consider it as a record of that date.

Mr. Swacker: I will withdraw the objection, and let it be put in, as indicating the test performed by the tester on that date.

Mr. Payne: I don't believe I have offered it. I will now offer it as Government's Exhibit 64.

The Court: It is admitted in evidence and considered read.

*By Mr. Payne.*

Q. How long ago did you say order 7626 was given?

A. I don't know.

Q. You said you had been using it for a long time. About how long was it, to your best recollection?

Mr. Swacker: I am willing to make this concession, that they were regularly shipped—

Q. Was it five years?

Mr. Swacker: That they were regularly shipped upon the orders such as that introduced in evidence, directing that so many cars a week heavy naphtha be shipped from Port Arthur to each of these points, and that it was a material of such average gravity as this boy may recollect as the average run along from the period of time covered by the counts in this indictment. I don't know of anything more that could possibly be proved by him.

Mr. Payne: If he will admit that according to the records of the Gulf Refining Company, the naphtha shipped from Port Arthur to Kiefer and Drumright was regularly entered as painters' naphtha—

Mr. Swacker: I will not admit it was regularly entered, but frequently entered by the boys, but I don't know that it always was, as painters' naphtha, but I am willing to admit that it was a grade such as is commonly



suitable for such purposes as you would use painters' naphtha for, commonly used, commonly—such purposes as you would use painters' naphtha for linoleum or paint or those things of that sort, but that it was not a refined product suitable for gasoline. We can stay here ten days and you could not prove any difference, I am willing to admit that.

Mr. Diggs: That what was shipped to Oklahoma, which we call heavy naphtha, was indiscriminately billed under the name heavy naphtha, painters' naphtha, unfinished naphtha.

Mr. Payne: I am not speaking of how it was billed, that is another story.

Mr. Swacker: And how it may have been described, around the refinery.

Mr. Payne: Unless you will admit these sheets show it was painters' naphtha, there is no use to admit it.

Mr. Swacker: Very well, prove all these sheets.

Mr. Payne: Won't you admit it is in your records?

Mr. Diggs: I am willing to admit that record.

Mr. Swacker: We admit that that one day does, and many other days do.

The Court: Check them up and let all of them go in. Then you can examine the witnesses about the product generally that was covered by those papers.

Mr. Diggs: No question about the name. The gentleman wants us to admit, in addition——

The Court: There can be no doubt about what they admit?

Mr. Swacker: Certainly this witness is not a competent witness to attempt to classify this commodity.

Mr. Payne: Your honor, I will excuse this witness, for a moment, to substitute another witness.

The Court: We will take a recess until tomorrow morning, and in the meantime, get your records up.

Gentlemen of the jury, you may separate, under the usual instructions, until tomorrow morning at 9:30.

(And thereupon court took an adjournment until 9:30 o'clock a. m., Friday, April 16, A. D. 1920.)

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## MORNING SESSION.

April 16th, 1920; 9:30 a. m.

(Whereupon court met pursuant to adjournment, the Honorable R. L. WILLIAMS, Judge, present and presiding and the jury having been called by the clerk, one juror being absent, the following proceedings were had, to-wit:)

By Mr. Swacker: We have prepared a memorandum with respect to what we are willing to concede in the matter we were discussing last night.

By the Court: Have you shown it to the other side?

By Mr. Swacker: No, sir, they just this minute came in.

By the Court: I see there is one absent juror, do any of the jurors know where he is?

By a Juror: No, sir, I do not.

By the Court: Does anyone know where he is stopping?

By a Juror: At the Cotton Hotel.

By the Court: Phone the hotel and see where he is.

(The marshall's office reported that the absent juror was at the hotel and would be [ ] in a few minutes.)

By the Court: What is the cause of the delay, Mr. Juror.

By the Juror: Why, your honor, the man in the next room to me told me that it was nine o'clock and I had just gotten up. I left an eight o'clock call and went back to sleep again.

By the Court: Whereabouts do you live?

By the Juror: At the Cotton Hotel.

By the Court: Where do you live when you are home?

By the Juror: At Wewoka.

By the Court: Now you were little late yesterday morning.

By the Juror: I will be here on time after this.

By the Court: Do you know what I ought to do to you? I ought to fine you enough to pay the expenses of this court the twenty minutes you delayed it, but I always apprehend a man that is careless would not be able to pay that fine. You know that is what is the matter with the world. We don't appreciate its relationship. I don't

see how a man could sleep until nine o'clock this kind of morning.

By the Juror: Your honor, I was up mighty late last night.

By the Court: That is just what I thought. A man that is on as a juror ought to keep regular hours so that his mental faculties would be in good shape.

By the Juror: I can show good cause why I was up late last night on a telephone call and telegraph business attending to some business. It is business that kept me up late.

By the Court: I will let you off this time but don't let this thing happen again. Proceed.

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And thereupon, S. G. SANDERSON was produced, sworn and examined as a witness for and on behalf of the United States, and testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury.

A. S. G. Sanderson.

Q. And where do you live? A. In Tulsa.

Q. Are you connected with the Gypsy Oil Company?

A. Yes, sir.

Q. What is your position with the Gypsy Oil Company?

A. General Superintendent, Gasoline Department.

Q. Which is located here in Tulsa, is that right?

A. Yes, sir.

Q. Are you in any way connected with the—how long have you been connected with the Gypsy Oil Company?

A. Since August 1, 1919.

Q. Weren't you connected with the Gypsy Oil Company prior to that time? A. Beg pardon?

Q. Weren't you connected with the Gypsy Oil Company prior to that time?

A. Prior, to that time, yes, sir, connected with them.

Q. Where were you located? A. Kiefer.

The Court: In what capacity?

Q. Yes, in what capacity and during what years?

A. Day man from September, 1913, until September, 1916.

Q. During the time you were connected with them in 1913, were they—was the plant completed at that time in Kiefer? A. No, sir, it was not.

Q. When was it completed?

A. It was completed the first of 1914, it was being built in 1913 and 1914.

Q. When did they commence operations, making casing-head gasoline?

A. I don't remember the exact date of that.

Q. Give me your best recollection with reference to that?

A. I will say it was along in December of 1913, about that time.

Q. Along in what time? A. December, 1913.

Q. December, 1913? A. Yes, sir.

Q. Were they shipping to Port Arthur at that time?

A. I could not say. That is a matter of record, and I was not connected with it in that capacity.

Q. What do you mean when you were, what did you do?

A. General work around the plant, whatever there was to do, keep the records and take the gravity.

Q. You were keeping the records and taking the gravity of this commodity as it came from the plant? A. How is that?

Q. You were keeping the records and taking the tests of the commodities that came from the plant that was manufactured there in the plant?

A. Yes, sir, and the general work and looking after the material and everything there was to do.

Q. And were you at that time transporting commodities from Port Arthur to Kiefer and blending it with your products at the plant and reshipping it to Port Arthur?

A. I don't know they were shipping it to Port Arthur, it is a matter of record and I could not say definitely, to the best of my knowledge they were.

Q. They were receiving commodities from Port Arthur that were blended with this material?

A. They were receiving material, I could not say whether it was from Fort Worth, or Port Arthur, in fact was not in charge, doing day labor around there.

Q. Were you blending the materials you received from the south with the product that you produced there?

A. Yes, sir, they were receiving it at that time they were.

Q. Now, then, who had charge of the shipping of that commodity at that time? A. Mr. Donovan.

Q. You say that you took the test, did you take the test of the commodities that came from the south?

A. Yes, sir, I was taking the test at that time.

Q. And you took the test from the commodities that came from the plant, that were produced there? A. Yes, sir.

Q. And you took the test of the blended commodity after the two were put together?

A. Yes, sir, I was taking the test, I was taking tests as they were loaded.

Q. Now then do you remember—do you know of your own knowledge whether they were shipping this blended material at that time?

A. Yes, sir, they were if I remember.

Q. That is you know they were producing the casinghead gasoline at the plant, you know they were receiving a material from the south that they blended with that and you know they shipped that out?

A. Yes, sir, that would be my memory of it.

Q. And do you know where they shipped it?

A. No, I could not say definitely, I did not look after that.

Q. Do you know the designated term, the name under which they shipped it?

By Mr. Swacker: We would just like to make the same objection we have made all along on that point as incompetent, irrelevant and immaterial.

By the Court: Very well, you may reserve the same right to strike out the evidence as the other.

By Mr. Swacker: Exception.

(Question read by the reporter.)

A. As I remember it was gasoline.

Q. Now, this in December, 1913, and you were there during the year 1914? A. 1914.

Q. You were there during the year of 1915? A. Yes, sir.

Q. And how much longer were you there? A. Kiefer?

Q. Yes, A. To September, 1916.

Q. To September, 1916? A. Yes, sir.

Q. Do you know that this same process that you have explained was carried on by them during that entire period?

A. Yes.

Q. I mean by that, that the gasoline was produced there at the plant, that they received the material from the south, blended it with the material there, and then shipped it again to Port Arthur, and they called it gasoline?

A. That was the general procedure, yes, sir.

Mr. Swacker: Our objections and exceptions will apply to these last few questions, also?

The Court: Yes.

Mr. Chambers: That is all.

The Court: Now, it seems to me that this is a duplication of what was admitted yesterday. I understood they admitted that was the practice before and afterwards. They saved their right to strike it out on the

ground of being irrelevant and incompetent. That is an admitted fact. That is an admitted fact for the purpose of this case, subject to their objection and exception, on the ground of irrelevancy and incompetency.

Mr. Chambers: Do I understand that these facts that this witness has testified to are admitted?

The Court: They have admitted it by other witnesses, the same thing, it comes as an admitted fact for the purpose of this case.

Mr. Chambers: The only reason this witness was put on was because, as I remember the testimony and the admission, I may be mistaken, they went from the month of May, 1916, up to the present time, and didn't go back of the month of May, 1916. And that was the purpose of putting on this witness, was to show that this transaction had continued during the entire period from the construction of the plant.

Mr. Swacker: We make a further admission to cover all that. I don't think this particular point has been admitted. We make a complete statement of what we admit subject to our objection. We admit from the inception, in the inception, at the plant in 1913, up until about the end of 1914 or 1915, the practice was to ship naphtha from Port Arthur to Kiefer, and there blended and shipped it, not back to Port Arthur or Fort Worth, but shipped it to northern points to market, shipped it to market, shipped the blended to northern points to market, and described it as gasoline.

Mr. Chambers: Also shipped it to Port Arthur?

Mr. Swacker: Not at that time, and if you have any grounds—

Mr. Chambers: I took the testimony of this witness.

Mr. Swacker: He said he could not speak with accuracy.

The Court: What is your best recollection?

A. I would say we did ship some, that is my best recollection. However, it is a matter of record and could be very easily secured and I did not bill it out and did not know where it went.

The Court: It is your best recollection some of that commodity was shipped to Port Arthur?

A. That is my best recollection.

Mr. Swacker: I will not extend the admission to that, but continuing the admission from where I left off,

that is, up to the year 1914, and the early part of 1915, the material was shipped to northern destinations, such as St. Paul and Minneapolis, and even Canada, and billed as gasoline; that beginning in the early part of 1915, shipments to northern markets described as gasoline, were discontinued altogether, with the exception of shipments to the Shady Side plant at Pittsburgh, which continued throughout the time up to the present, in fact, to be made and described as gasoline, and the balance of the material was all from thence forward shipped to Fort Worth, described as gasoline, to the Ft. Worth refinery, and thereafter, starting in 1915, continuing up to December, 1916, all of it except that going to Pittsburgh was shipped to Port Arthur refinery, billed and described as gasoline; that following December 2, 1916, shipments were made of the blended commodity from Kiefer only to Port Arthur, and described as unrefined naphtha and to Shady Side, Pittsburgh, to the company, the Gulf Company's plant, and described as gasoline in the billing. That is all, of course, subject to our objection and our exception.

By Mr. Swacker: Does that cover the entire field?

By Mr. Chambers: We accept that admission but we are still depending upon this witnesses testimony.

By the Court: I will not permit you to cover any evidence covered by the admission.

By Mr. Chambers: I say we are still standing on this witnesses testimony and we accept their admission.

By Mr. Diggs: If the court please, we move to strike from the record that portion of this witnesses testimony which he says it is his best recollection at the time that this product was shipped in 1913 and 1914 back to Port Arthur, because he says—he shows it was not his business to ship and he had no connection with the shipping and no means of knowing.

By the Court: On what do you base your recollection? First, where did you get your information—what were your duties there?

A. I was loading the cars out and taking the gravity test of it and as I remember, after that time we did ship to Port Arthur and I don't remember just where we stopped.

By the Court: Now, in taking the gravity test and loading the cars did you have occasion to see the shipping orders and bills of lading and things like that?

A. No, that wasn't part of my business.

By the Court: Did it come under your observation



in the discharge of your duties, either directly or indirectly?

A. Well, they may have come under my observation, yes I have seen lots of bills of lading but I couldn't tell you when we stopped shipping north and went back to shipping to Port Arthur, as I say that is a matter of record.

Q. Have you got those records? A. The records are here.

By the Court: I will let you withdraw this witness and confer with the other side and get the record. Whatever they show, that is better. Of course, that is one way of proving a man's best recollection, but it is not a definite recollection. That don't have strong probative effect. If objection is made on the ground it was not the best evidence I will sustain that.

By Mr. Swacker: Very well, we make that now.

By the Court: I sustain it.

By Mr. Swacker: We will also admit—

By Mr. Chambers: I don't know.

By Mr. Swacker: You only have Kiefer, you haven't touched Drumright and Jenks.

By Mr. Chambers: How do you know we want that.

By the Court: Very well. Do you all want to cross examine the witness now?

By Mr. Swacker: Yes, sir.

By the Court: I struck the evidence out I don't suppose there is anything to cross examine on.

By Mr. Swacker: I was going to cross examine him on the grade of the blend. I have not stated that the blend was the same degree of blend.

By the Court: Did they ask him about the blend.

By Mr. Swacker: They asked him if it was blended. It isn't established as to whether it was the same character of blend at all that was shipped. That is the blend in 1914 was of the same character of blend that we shipped subsequently. We don't concede it was the same in this admission.

By the Court: Do you want to withdraw the witness.

By Mr. Chambers: No, sir.

By the Court: Go ahead, let's make progress.

Q. Now, what you testified to is the facts as you remember them of your own knowledge? A. Certainly.

Q. In other words, you never saw the shipping orders or bills of lading?

By Mr. Swacker: I object, that testimony has been stricken out.

By Mr. Chambers: I don't think this is a matter where the records are essential; this man is testifying from his own knowledge how they were shipped.

By the Court: You got that knowledge by seeing the bills of lading and shipping orders it was not——

Q. How did you get the knowledge?

By the Court: I asked him about that.

By Mr. Chambers: Let me ask him that question over please, how did you get the knowledge?

A. General observation about the plant, you must remember we ship out a number of cars—we shipped out a number of cars after that and I could not determine the date we started or stopped shipping.

By the Court: How did you get the knowledge as to how it was shipped or whether it was shipped as gasoline or naphtha?

A. That come from the records, I mean by that, the bills of lading, etc.

By the Court: Where are the bills of lading?

A. We have the bills of lading in the office. I don't know that they are here, now sir.

By the Court: I will let you——

By Mr. Chambers: I would like to have the bills of lading.

By the Court: I will let you have them.

By Mr. Chambers: You have them in the office, will you please bring them over?

By the Court: Will you produce them?

By Mr. Swacker: Yes, sir, if there are any shipments to Port Arthur just as soon as we can see the bills of lading we will be glad to admit it.

By the Court: He is the general manager. You can inspect the records and see what they are and have them here just so we will know what the facts are.

By Mr. Swacker: You can go back and look up and see if you have any shipments made to Port Arthur during the period of time from 1913 and 1914 and when we were shipping north and if so bring them along. If so you can come back and tell me and we will admit it. If not, bring them along so the other side can examine them.

A. Any records of bills of lading.

By the Court: Shipping orders or bills of lading or what some people call shipping orders and what some people call bills of lading.

By Mr. Swacker: The shipping order is lodged with the railroad company and the bill of lading with the shipper.

By the Court: They keep a copy.

By Mr. Swacker: Neither shippers order or bill of lading—it is the third copy. No cross examination.

By Mr. Chambers: We are through.

(Witness dismissed)

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H. W. MORRISON, called as a witness on behalf of the United States, having been first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name, please. A. H. W. Morrison.

Q. You are the Mr. Morrison that was here the other day?

A. Yes, sir.

Q. And you are the chief clerk of Mr. Donovan at Tulsa here? A. Yes, sir.

Q. And I want you to identify some letters, if you please, sir.

(Mr. Chambers asked the reporter to mark paper as Government's Exhibit Number 67.)

Q. I am handing you Government's Exhibit 7, and ask you if you can identify the handwriting there, and if it was received in your office.

The Court: Now, these records are just as accessible to one side as the other. I directed the clerk not to let them take them out.

Mr. Swacker: Yes, but we cannot anticipate what they are going to put in.

Q. (Question read by the reporter.)

A. It was received in the office. My initial appears on it, and the signature looks like the signature of Mr. Ellis.

Q. Well, what is your best judgment? You have received plenty of letters from him.

The Court: Do you know his signature?

Mr. Diggs: In order to save time, we will admit——

Mr. Swacker: Just for the purpose of this trial, we admit this is Mr. Ellis' signature. I do not know what his purpose is.

Mr. Chambers: And they were received by this office.

The Court: All these admissions are made under the general rule in this case only and in this trial.

(Mr. Chambers handed to the reporter papers and requested that he mark them as Exhibits, and they were marked as Government's Exhibits 68, 69, 70 and 71.)

Mr. Chambers: Do you admit these were received by Mr. Donovan?

Mr. Swacker: Yes.

Mr. Chambers: That is, Exhibits 67, 68, 69, 70. They admit, for the purposes of this trial, they were——

The Court: Let me see them.

Mr. Chambers: I am not offering them in evidence yet. I am just identifying them. That is all, Mr. Morrison.

The Court: Now, Mr. Donovan was manager of the Gypsy Oil Company?

Mr. Swacker: Yes, sir, gasoline department.

The Court: Very well.

Mr. Swacker: Now, may we have leave to recall this witness and permission in the meantime to examine the papers marked for identification, with a view to seeing if we desire to have him identify other correspondence?

The Court: I believe it has been proven that Mr. Ellis was both traffic manager for the Gypsy and Gulf.

Mr. Swacker: No, sir, it hasn't been absolutely proven that that was the case, and, as a matter of fact, it is really a confused question, as to whether he really has any relation to the Gypsy. As traffic manager of the Gulf, the Gulf being the purchaser of material from the Gypsy, he did appropriately in his capacity of traffic manager of the Gulf issue instructions or directions to the Gypsy in the person of Mr. Donovan, the manager, as to how he should ship that material. And we will admit that he did so instruct Mr. Donovan how to ship the material, doing so as traffic manager of the Gulf, but not doing so as traffic manager of the Gypsy.

The Court: The facts are is not what the title states but what the practice makes him.

Mr. Swacker: There is no showing up to this time that he is.

Mr. Chambers: As far as the traffic manager——

Mr. Diggs: We will admit this, and then the court can instruct the jury as to the law; that is, it was a part of the duties of Mr. Ellis, as traffic manager of the Gulf Refining Company, to give directions to Mr. Donovan as to how the cars loaded with casinghead gasoline consigned to the Gulf Refining Company should be shipped.

The Court: And all its plants?

Mr. Diggs: All its plants in Oklahoma.

The Court: Would that apply to shipments to all points?

Mr. Swacker: No, sir, because all shipments made that he directed, were merely shipments that were made to the Gulf, and we say he did that in his capacity as traffic manager of the Gulf.

The Court: Regardless of whether north or south shipments?

Mr. Swacker: Yes, sir.

Mr. Chambers: Of course, they are voluntarily making these admissions in the record; we permit them to make them, but we are not bound by what they say.

The Court: No.

Mr. Diggs: We are just making them to save time.

Mr. Chambers: We are accepting them, as far as they go, but are not bound by them—by what they say.

The Court: Of course, you are not bound by the limitations, but you can supplement them.

Mr. Chambers: It is not an agreement on our part that those are the facts. For instance——

The Court: Nobody intimated that. The court has not.

Mr. Swacker: We merely assume the prosecution is attempting to prove these facts and we are conceding that to be the state of facts.

Mr. Chambers: What called my attention to it, they say casinghead gas. Of course, that is not an admission on our part.

The Court: Well, there is nobody understands it that way.

Mr. Chambers: Well, I did want it understood that way.

The Court: Go ahead.

Mr. Chambers: That is all, Mr. Morrison.

Mr. Swacker: May I make Mr. Morrison my witness temporarily, to identify some correspondence that may come up?

The Court: Very well.

*Examination by Mr. Swacker.*

Q. Mr. Morrison, will you please look at that paper and state if you can identify it?

The Court: You had better have it identified as an exhibit so you can get it in the record.

Mr. Swacker: Yes, sir.

(Whereupon the paper last above referred to was marked by the Reporter as Defendant's Exhibit number 72.)

Q. The paper marked Defendant's Exhibit number 72.

A. That letter was received in Mr. Donovan's office and shows Mr. Donovan's "D", which was his identification.

Q. You handle Mr. Donovan's correspondence?

A. Yes, sir.

Q. In the course of handling it, was any letter received from the Bureau of Explosives?

A. I couldn't recall of any particular letters. However, I do recollect there was letters received from time to time from Colonel Dunn.

Q. Well, were they letters of that character, a carbon copy merely signed with a rubber stamp. A. Yes, sir.

The Court: Now, satisfy yourselves that all these letters actually exist and stipulate to that, and save time.

(Paper handed to the Reporter and marked Defendant's Exhibit number 73.)

The Court: Let's get the facts before the Court and the jury with as little delay as possible.

By Mr. Swacker: If the Government will admit defendant's exhibit No. 72 for identification was a letter from Colonel Dunn of the Bureau of Explosives—

By Mr. Chambers: Can't you submit those to us?

By Mr. Swacker: I just got these two.

By Mr. Chambers: I can't decide anything in a minute, I am too slow.

By Mr. Swacker: You folks have seen a lot of that stuff, you ought to know it as well as you do money.

By Mr. Chambers: We admit this is a letter from Dunn.

By Mr. Swacker: Carbon copy sent Donovan?

By Mr. Chambers: It shows on its face, yes.

By Mr. Swacker: This is a carbon copy, defendant's exhibit No. 73 carbon copy from Inspector League to Colonel Dunn, carbon copy to Mr. Donovan.

By Mr. Chambers: This don't show it. It hasn't got Mr. League's signature on it.

By Mr. Swacker: It hasn't got any signature on it.

By the Court: Investigate and see.

By Mr. Swacker: You are excused Mr. Morrison.

(Witness dismissed)

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By the Court: I am going to insist on both sides hereafter to agree to matters that are facts and see if possible, find out what the facts are and then if it becomes a question of law whether it is admissible.

Whereupon, MR. HOAGLAND, a witness for and on behalf of the Government having been first duly sworn according to law was called to the witness stand and testified as follows to-wit:

*Direct Examination of Mr. Hoagland by Mr. Chambers.*

Q. You may state your name, your name is Mr. Hoagland?  
A. Yes, sir.

Q. Have you been on the stand before? A. No, sir.

Q. You are connected with the Gypsy Oil Company, gasoline department, since August 8, 1917? A. Yes, sir.

Q. Did you have anything to do with the shipping of gasoline? A. I did.

Q. Representing the Gypsy Oil Company? A. Yes, sir.

Q. Did you have anything to do with the shipping of gasoline? A. I did.

By Mr. Chambers: The purpose of this witness is to show the materials shipped from Kiefer was shipped north and south the same as here and from the same tank.

By Mr. Swacker: We will admit that.

By Mr. Chambers: One shipment north and the other shipment south? Will you admit during this period that there was a commodity manufactured at Kiefer shipped out of the same tank at Kiefer, one car loaded, designated as gasoline, designated Shady Side, Pennsylvania,



and the other designated unrefined naphtha to Port Arthur?

By Mr. Swacker: We do.

By Mr. Chambers: At the same time.

By Mr. Swacker: Yes, sir. Our previous admission was it was the same material and if it makes it stronger we will say it is out of the same tank at the same time and this not as strong as the other.

By Mr. Chambers: We have the other admission in. That is all with this witness.

By Mr. Swacker: Of course this is admitted subject to our objection to the admissibility of the evidence that it is incompetent.

By the Court: Yes.

By Mr. Swacker: The Government states that they will admit the paper marked Defendant's Exhibit for identification 73 is a carbon copy of a report of the Inspector of the Safe Transportation Bureau named League to Colonel Dunn, chief inspector. This carbon copy to Mr. Donovan of the Gypsy Oil Company. Is that correct, Mr. Gann?

Mr. Gann: That is correct, yes, sir.

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P. T. McKIRAHAN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name, please. A. P. T. McKirahan.

(Whereupon Mr. Chambers requested the Reporter to mark papers as Government's Exhibits 75 and 76.)

Mr. Swacker: We admit that the paper marked Government's Exhibit 75 is a letter from Mr. W. P. Donovan, Superintendent of the Gypsy Oil Company to Mr. P. T. McKirahan, General Agent of the Atchison, Topeka and Santa Fe Railway, Tulsa, Oklahoma, dated February 9, 1917. We understand it is not now offered in evidence.

Mr. Chambers: No. Now, will you admit that that is a letter he wrote to Mr. Donovan?

Mr. Swacker: No. This is to Mr. Koontz.

Mr. Chambers: Yes, I beg your pardon.

Mr. Swacker: We will admit the paper marked Government's Exhibit 76 for identification is a letter from Mr.

McKirahan last mentioned, to Mr. J. R. Koontz, General Freight Agent, Atchison, Topeka & Santa Fe Railway, Topeka, Kansas, dated November 10, 1916. By making this admission however, we do not admit the relevancy or competency of that letter when it may be offered, being between third parties.

Mr. Chambers: That is all, Mr. McKirahan.

Mr. Chambers: Just a moment, your Honor. These admissions have done away with certain testimony.

The Court: Now, to expedite and get this evidence before the jury, my idea is that after all the evidence is in, I will give you two or three hours on a side and hear you argue the facts and law before me, so I will get my bearings, we will have more time for that. That is my idea. That is, when you get all the evidence in. I will hear both sides discuss the law of the case.

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And whereupon J. H. KOONTZ was produced, sworn and examined as a witness for and on behalf of the Government, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your name. A. J. H. Koontz.

Q. Where are you employed?

A. Gulf Refining Company, Port Arthur.

Q. How long have you been employed there?

A. About three years and a half.

Q. What are your duties? A. At present.

Q. Were you in the laboratory at one time? A. I was.

Q. How long were you in the laboratory.

A. About three years.

Q. You left there about when? A. Two years ago.

Q. The latter part of the summer of 1918? A. Yes, sir.

Q. How long were you in the laboratory?

A. About three years.

Q. What were your duties in the laboratory, Mr. Koontz?

A. Inspector.

Q. Explain that a little more in detail.

A. Well, my duties were to inspect the daily tanks and shipments going out and coming in.

Q. The samples would be brought to you in the laboratory? A. Yes, sir.

Q. And you would make certain tests of those samples?

A. Yes, sir.

Q. What tests were made in the laboratory?

A. By me or by, you mean the full test?

Q. Taking up the first test you made personally?

A. Gravity and color.

Q. And what other tests were made in the laboratory?

A. Distillation. We made a doctor test at interval.

Q. Always made a doctor test? A. Not necessarily.

Q. When you made a doctor test, you would follow—you would so enter it on your daily test sheet, would you not?

A. Yes, sir.

Q. Did you usually make a doctor test on gasoline and naphtha?

Mr. Swacker: I object to that, because it is not shown this witness is qualified to testify concerning all the gasoline and naphtha that may be in the plant or all the material that may be there. He is asking did he usually make the doctor test. That is asking him to testify was the doctor test usually made of all the material in the plant. This witness is not shown to be qualified to do that.

The Court: Are you a chemist?

A. No, sir.

The Court: What qualifications do you have for making these tests? A. None whatever.

Q. How long did you work there? A. Three years.

Q. In what capacity? A. As shipping inspector.

The Court: What qualifications does it take to discharge that duty?

A. You mean what education?

The Court: Well, experience.

A. Well, practical experience is all that is necessary?

The Court: To make what test?

A. Gravity, color, doctor or distillation test.

The Court: Now, did you have the experience necessary to qualify you to make that test? A. I did.

Mr. Swacker: I do not dispute his qualifications to make these tests. I say his office was merely the function of performing that mechanical——

The Court: Ask your question again.

Q. Did you make the doctor test on gasoline and naphtha?

Mr. Swacker: I object to the form of the question. It is too indefinite by referring to gasoline and naphtha, or did he ever make and doctor test on gasoline?

The Court: Now, what doctor test did you make, on what commodities?

Mr. Swacker: I object to his attempting to testify to any particular commodities, as being unqualified.

The Court: If he knows, he may tell. Do you know what commodities you make a test on, and you may testify, and you can have your exception. Go ahead.

A. We made the doctor test when specified.

The Court: Well, propound the question to him.

Q. Specified by whom? A. The man in charge.

The Court: Who was usually in charge, what did they call him?

A. The man over me?

The Court: Yes.

A. Chief chemist; the man in charge of the laboratory in other words.

The Court: Well, have you got any specific instances you want to ask about? Go ahead.

Q. Now, isn't it a fact that the doctor test was made rather seldom, on gasoline and naphtha?

Mr. Swacker: I object to that. It is not shown the witness is qualified to know what gasoline and naphtha are.

The Court: If he knows, he may answer, and you may have your exception.

Mr. Swacker: Now, it is not shown he is qualified in the course of business. May I cross [] the witness just a minute on this?

By the Court: If he knows the physical fact I will let you cross examine afterwards and strike it out if it is not competent and relevant.

By Mr. Payne: Answer the question.

By the Witness: State the question please.

Q. Whether the doctor tests were usually made on gasoline and naphtha?

By the Court: If you know.

By Mr. Swacker: We object on the grounds stated.

By the Court: You have your objection and exception.

By Mr. Swacker: Exception.

A. I don't know that it was usually made on all stuff. I was only on for eight hours a day.

By the Court: What did you make it on then, if you know when you were on duty.

A. Made it on shipments of gasoline going out under specified order when necessary.

Q. What was the purpose of this doctor test?

By the Court: If you know.

By Mr. Swacker: I object to that.

By the Court: If you know, you say on specified orders when necessary. Now when was it necessary?

A. When we got the orders.

By the Court: If you know why did they make these tests, what were the tests made for if you know?

A. Sweetened tests.

Q. To determine whether it is sweetened or sour?

A. Yes, sir.

Q. Just what do you mean by sweetened or sour?

A. I could not define that.

Q. Where were you on the 73 shift usually?

A. No, sir, we changed shifts.

Q. You were on the 73 shift what was your first duty in the morning?

A. To see that the daily samples were gotten in.

Q. You would send the boys out to the tank to get the samples? A. Yes, sir.

Q. And tell them to bring to bring the samples back to you? A. Yes, sir.

Q. And then you would make a test of them? A. Yes, sir.

Q. Would they get a sample of all the light oil tanks in the refinery? A. I could not say.

Q. Did you instruct them to get samples?

A. We had a certain amount of tanks to get daily.

Q. From what tanks did you get the samples daily?

A. Tanks shown on the test sheet.

Q. 800 series?

A. We had some that was not on the 800 series.

By the Court: Let him see the test sheet, let him identify it if he can to refresh his memory.

A. All those.

By the Court: Name them.

Q. That included the gasoline and naphtha tanks?

A. Yes, sir.

By Mr. Swacker: We object, witness not shown to be qualified that he knew how many tanks what tanks anything relative to the tanks. There is no qualification shown the witness knew how many tanks or what tanks or anything relative to the tanks.

By Mr. Payne: It is clearly shown, he worked in there for three years and got these samples from these tanks every day.

By Mr. Swacker: He did not——

By the Court: Hold on, don't talk so much. You worked there three years?

A. Yes, sir.

By the Court: Do you know where the tanks were located?

A. Not all of them.

By the Court: Let me have that sheet. Now what tanks did you say they got samples from that come in the laboratory which you know?

A. The tanks shown on there.

By the Court: Now you can show this to him and have him give the number of the tanks, can't you Mr. Payne?

By Mr. Payne: Yes, sir.

A. This sheet will not comply with the usual amount of tanks, the chances are some of them will be empty at this date.

By the Court: Well look at that number and see whether samples were gotten from those tanks.

A. 805, 858, 838, 817, 850, 852, 855, 810, 843, and 849.

By the Court: Whose memorandum is that, who made those entries?

A. That is mine.

Q. State the numbers of the gasoline and naphtha tanks?

By the Court: If you know.

A. As shown here on this 805, and 857, are listed as gasoline tanks on this memorandum. 838 was listed as painters naphtha on that date. South Carolina gasoline distillate——

Q. Never mind about the distillates, just the gasoline and naphtha? A. That is all that is on there.

Q. At the time that you made your tests did you make a memorandum on a scratch pad showing the result of your tests? A. I did.

Q. And then did Mr. Timmons, come over and examine those memorandums of yours and state what the oil should be called?

By the Court: Who was Mr. Timmons.

A. He was in charge of the light oil department.

By Mr. Payne: He was what? Chemist or what?

A. No, sir.

By the Court: What was his duties?

By Mr. Swacker: He was on the stand the other day and testified with reference to blending.

By the Court: Oh, yes, I remember.

Q. And Mr. Timmons would indicate the kind of oil it was? A. Yes, sir.

Q. And then after you had made the test from all the tanks and these memorandums had been gathered together you would make up this sheet, this daily test sheet, is that correct? A. Yes, sir, daily test sheet.

Q. And then where would you send this sheet?

A. It would be taken up stairs for the stenographer.

Q. He would he take it to up stairs?

A. Come down and got it himself.

By the Court: What was his duties?

A. General stenographer of the laboratory.

By the Court: Under whose direction did he act?

A. The chemist, chief chemist.

Q. Did he make typewritten copies of these sheets?

A. I could not say.

Q. Do you know whether copies of these sheets went to the General Superintendent of the plant, Mr. Pritchard?

A. No, sir, after they left the testing room I could not testify to where they went at all.

Q. Is it not a fact that copies of these sheets were sent to Pittsburgh? A. I could not say that I do not know.

Q. Now Mr. Koontz, I notice some entries on the daily test sheet of February 17, 1918, unrefined naphtha—can you state whether the name, unrefined naphtha was used during the entire time you were in the laboratory?

Mr. Swacker: I object to that, on the ground that the papers are the best evidence, whatever the custom was in that respect.

The Court: I sustain the objection to that.

Q. Is it a fact that instructions were received by you in the laboratory that the oil that had been previously designat-



ed as Kiefer gasoline should thereafter be designated as unrefined gasoline?

The Court: And if so, when?

A. I cannot remember the date.

The Court: About when?

A. I could not say.

The Court: What year?

A. I could not say that.

Mr. Swacker: If any importance is sought to be attached to that—I don't know what the facts are, but we will concede that the government is seeking to prove, that in substance instructions were issued to the laboratory boys to call this unrefined naphtha from the time that the practice to call it unrefined naphtha on the shipping arose? I don't know what the facts are in that respect, but we will concede that; but we deny the relevancy of it, and of course, we object to the admissibility of it.

The Court: Very well.

Mr. Payne: That is all.

*Cross Examination of the Witness Koontz by Mr. Swacker.*

Q. What did you say your name was? A. Koontz.

Q. Isn't it a fact that you simply tested whatever material you were told to test, and you recorded the result of your test? A. Yes, sir, exactly.

Q. Did you have anything to do with directing the sample boys what to get to bring in to be tested?

A. We had a certain number of tanks there to be tested daily; the sample boys were changed often and we had to get the list from Mr. Timmons of the tanks, of what tanks were full at that time, or had any stock in them, and this, we would have to tell the sample boys what to get, none of the test. I should think would know what tanks, simply tested them as they were brought in.

Q. You directed the sample boy to get samples, you directed him to get whatever samples Mr. Timmons had told you to have tested?

A. That is the idea. Some of the tanks would be empty one day and have something in them at other dates.

Q. Did you actually know what was in the tanks yourself? A. I wasn't qualified to do that.

Q. Did you have anything to do with the classification in

the sense of describing by name any material that you handled? A. I got that from the officials.

Q. From Mr. Timmons?

A. You mean the daily tanks, that came from Timmons, the daily tanks.

Q. On the daily tanks, Mr. Timmons would tell you what to report the test as being? A. Yes, sir, that is the idea.

Q. And you had nothing to do with giving the name from specifications or tests you had just made?

A. None, whatever.

Mr. Swacker: Now, I move to strike out all his other testimony, on the ground it is shown he is incompetent to have attempted to have given any testimony as to what was in any tank.

The Court: I will sustain the objection as to what was in the tank, but let it stand that he made the test on those days, and what the practice was in getting information from Mr. Timmons, and that they marked these certain ones as gasoline, and so forth, afterwards.

Mr. Payne: Yes, that was the entire purpose of the testimony, your Honor.

The Court: Any statement that gasoline was in there, I exclude.

By Mr. Swacker: The reason I am objecting is there is an effort here to try to prove technical facts by these boys that have nothing to do but—

By the Court: Yes, but you can prove the practice of the plant. *He* is a plant that belongs to the defendant. It has installed its employees for a purpose. They understand what they know and if under their supervision such and such is done that involves the test of specific gravity or the distillation or the weight or anything else, the color, has been under supervision, that is marked so and so, that practice may be shown for what it is worth.

By Mr. Swacker: But the point I am objecting is this, though the practice may be shown it had been a custom to call a thing a certain thing, that is no proof as to what the thing was.

By the Court: As to the weight of the evidence that is a matter to be determined later. I hold that is evidence as to the weight of it, that is another question.

By Mr. Payne: That is all.

(Witness excused)

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By Mr. Swacker: I don't see from the evidence this last witness the Court has left any of his evidence but I would like an exception and move to strike it out if there is any supposed evidence there, if he has stated any particular commodity.

By the Court: Well whatever that is there it is stricken from the consideration of the jury. All that is left is what he knows within the scope of his duties, his acts and the evidence as to the instructions under which he acted. Then his evidence as to that sheet being gotten by the stenographer who worked under the Chief Chemist, the fact he come and got it and took it upstairs where the chief chemist office was but as to any copy being made he testified he did not know about that.

Whereupon MR. OTEY, a witness for and on behalf of the Government was recalled for further direct examination.

*Further Direct Examination of Mr. Otey by Mr. Payne.*

Q. Are you the same Mr. Otey who was on the stand yesterday? A. Yes, sir.

Q. Mr. Otey after you made these daily test sheets where did you send them, what did you do with them?

A. We left them right in the ledger.

Q. Right in the ledger?

By the Court: That a loose leaf ledger.

A. Yes, sir.

By the Court: Did anybody come and get them?

A. Yes, sir.

Q. Who? A. Several fellows.

By the Court: Whose duty was it anybody's special duty?

A. Yes, sir, it was the stenographer's duty, the stenographer to the chief chemist.

By Mr. Swacker: If the government will say what they are trying to prove we have no doubt it is so, but if they will state what they want perhaps we can agree on it.

By Mr. Payne: Some things the other witness did not know. If Mr. Swacker will concede a typewritten copy of these sheets made in duplicate, one copy sent to Pritchard, General Superintendent and another copy sent to Pittsburgh, and these sheets were working basis of the plant by which they moved all they had on hand and how they were going to meet the orders and do business—

By Mr. Swacker: If it is sought to prove these sheets were the working basis on which they did business and how they did business, we submit that he has already been unqualified for any such purpose as that.

By the Court: Go ahead, see what the witness is qualified to testify or not. I will let him testify if he knows copies were made.

Q. Do you know whether copies of these sheets were made by the stenographer?

A. I don't know, I am not positive about that.

Q. What would be the purpose of the stenographer coming down there and getting the sheets?

By Mr. Diggs: To which we object, irrelevant and incompetent, and calling for a conclusion of the witness.

By the Court: Yes, sir, unless he knows, do you know what the stenographer did with them when he came there and got them?

A. I know one thing he did.

Q. What?

A. He put them in a big ledger and kept them as a record.

Q. Did you ever see him copy them?

A. Sometimes he does. Yes, sir, certain things on those sheets.

Q. What? A. Shipments.

Q. What do you mean by shipments? A. Cars.

Q. Did you ever see him copy?

A. Copy the whole thing?

Q. Yes, sir? A. No sir, I never did.

By the Court: Have you any of the typewritten copies?

A. No, sir.

The Court: Go ahead. I will let you prove that he knew, if you can.

Q. I notice on many of these sheets, Mr. Otey, that there are order numbers in the last column; where did you get that order number? A. From the tank car loading slips.

Q. From the tank car loading slip? A. Car slip.

Q. Would that loading slip show the number of the tank from which the oil in the car was pumped?

A. Yes, sir, the majority of the times it would.

Q. The majority of the times?

A. Yes, sir, it is supposed to show it; if it didn't show it, we would find out and mark it on the slip.

Q. And you made your entries on these slips from that car slip?

A. Yes, sir, and from the tests of the sample that we got.

Q. Mr. Otey, where these sheets show an order number, then that indicates a shipment, does it? A. Yes, sir.

Q. And the car number shown on this sheet, indicates the number of the car in which the shipment has been pumped, into which a shipment has been pumped, is that correct? That is, referring to the first item on that daily tank sheet for February, 1918, showing gasoline in car number 1959, order number 45076; does that indicate that on that date, that gasoline was in that car?

A. Yes, sir, it was pumped from tank 805 and 838 into the car.

Q. That the gasoline was pumped from tank 805 and 838 into the car? A. Yes, sir.

Q. I will ask you to look at this same sheet that I mentioned a moment ago, and state the entries thereon, as to what was in tank 838.

Mr. Swacker: I object to the witness attempting to testify to the contents of a written paper.

The Court: Read the question.

(Question read by the Reporter.)

The Court: Well, let me have the sheet.

Mr. Payne: It is an important part of the case your Honor.

The Court: Now, who made the entry here on, relative to 838?

A. Look at the bottom of the sheet. Is there a name signed to it?

The Court: Is that your name, S. H. Otey?

A. Yes, sir, that is it.

The Court: Did you write the term painters naphtha after that?

A. Yes, sir.

The Court: How come you to do that?

A. What?

The Court: 838.

A. Let's see that a minute. Yes, sir, I did.

The Court: Each one of them there?

A. Yes, sir.

The Court: On five lines, one, two, three, four. Now, how come you to write the words painters naphtha there?

A. Because it was on the car slip.

The Court: I will let it go that far.

Mr. Swacker: We offered this morning to admit, and I can not see what can be sought to be proved.

The Court: I want to see what he is driving at. Go ahead. Now, this man testified the other day he was not a chemist.

Mr. Payne: Yes, sir. Did the witness answer the question.

The Court: I will not let him answer the question you propounded, but I propounded questions there and he testified he wrote the words painters naphtha opposite that number of tank, and that is the reason he did that, was because it was on the car slip. Is that it.

A. Yes, sir.

Mr. Swacker: We object, as incompetent, irrelevant and immaterial, no proof of anything of what was in the tank, and the car slip is not in evidence. It is a written document and it is the best evidence of its contents.

The Court: What was done with the slip?

A. They were turned into the main office with our signature on the bottom of them, saying they were up to the specifications, whatever they called for.

The Court: I will permit him to state he wrote that from the information he received by examination of the car slip—you did that in the course of the discharge of your duties as an employee of this concern?

A. Yes, sir.

The Court: And within the scope of your duties under the instructions you received in that capacity?

A. Yes, sir.

The Court: I will let it stand.

Mr. Swacker: May we have an exception?

The Court: Very well.

Q. Did the car slip designate the commodity as painters naphtha?

The Court: No, I will not let you go that far. They have an objection here to proving specifically what was in that. He has testified that he made that from the information that he got within the scope of his duties by examining those things, and that is as far as I am going to let him go.

Mr. Payne: I think that is far enough, in reality.

Q. Mr. Otey, did you receive instructions in the labora-

tory from your superiors that the entries in those sheets, Kiefer gasoline should be discontinued and that the term unrefined naphtha should be substituted? A. Yes, sir.

Q. Who gave you those instructions?

A. Well, I don't know, positively.

Q. Well, now——

A. I cannot say absolutely who gave them to me.

Q. What is your best recollection?

A. It was either——

Mr. Diggs: I don't see any reason for encumbering the record with this.

The Court: Yes, they admit it, when did you get the instructions?

A. I don't know.

The Court: About what year?

A. Either the latter part of 1917, or the early part of 1918, as well as I remember, because I left there in 1918.

Mr. Swacker: Well, now, we withdraw our admission we made a while ago that it was about December, 1916.

The Court: My recollection was that you didn't state the time.

Mr. Swacker: We said that if they wanted it, we would admit it, but they didn't say what they wanted.

The Court: Very well.

Q. Mr. Otey I show you Government's Exhibit number 77, and will ask you if this book is the same record that was later kept on the daily test sheet, same kind of a record.

The Court: Let's see. You claim they discontinued that practice?

Mr. Payne: No, they first kept the record in this book and then adopted that sheet form.

The Court: You mean they discontinued the book and adopted the looseleaf sheets?

Mr. Payne: Yes.

The Court: Your question is that the book that was kept before the practice of the looseleaf sheets was adopted?

A. Yes, sir.

Q. Referring to an entry on page 266 of December 29, 1916, "Kiefer," I will ask if that is in your handwriting?

A. It is.

Q. Mr. Otey, look at that carefully and tell me whether,



at that time, that entry was made, you wrote it in, "Kiefer Gasoline?"

A. Whether I wrote it "Kiefer Gasoline?"

Q. Yes, sir, look closely.

A. Let's look back and see some more of my handwriting. That word "Kiefer," yes.

Whereupon Court resumed after a few minutes recess and the following proceedings were had and done, to-wit:

Q. Will you answer the question that I asked you?

A. Why it is something like my handwriting, I don't know whether it is or not. It is erased. You cannot see it plain enough to identify it.

Q. The words gasoline that was originally there, has been erased?

A. Yes, sir, I think so; looks that way, anyway.

Q. Now you said that your handwriting? A. That word Kiefer is my handwriting.

Q. Was that word gasoline that was written in there also in your handwriting? A. I cannot say for sure.

Q. Don't you know that that is your handwriting?

A. No.

Q. Do you mean to say.

By Mr. Swacker: We object to him cross examining his own witness.

By the Court: I will permit him to ask that.

Q. Maybe you can tell better by examining it with a glass?

By Mr. Swacker: I haven't the slightest objection whatever to showing the facts, whatever the fact is in relation to that matter but it obviously incompetent so far as any showing that has been made by the government.

By the Court: Well, now wait—

A. The first letter looks like mine.

Q. I guess if the first letter is yours—

A. I cannot positively say that it is mine though.

Q. Referring to page 272 of Government's Exhibit 77 I will ask you to examine the word Kiefer about ten lines down and I will ask you to state whether that word is in your handwriting? A. That word Kiefer is.

Q. Can you see gasoline was written in there and showing the entry originally read Kiefer Gasoline? A. Yes, sir.

Q. Can you see the word gasoline has been erased?

A. Yes, sir.

Q. Did you erase the word gasoline?

A. No, sir, I don't think so, I will not be sure.

Q. Do you know who did erase the word gasoline?

A. No, sir.

Q. Referring to page 276 of Government's Exhibit 77 about the middle of the page "Kiefer" and state whether or not that is in your handwriting? A. That is.

Q. When you made that original entry did you write Kiefer gasoline? A. I don't know.

Q. You know your own handwriting don't you?

A. I know my own handwriting all right enough but I cannot see enough of that to hardly see any of it.

Q. Now look close? A. I am looking close.

Q. Can you see evidence of erasure? A. Yes, sir.

Q. Can you also see an erasure of the ditto marks under the word Gasoline? A. Yes, sir.

Q. Did you erase the word gasoline there? A. No, sir.

Q. Did you know who did erase the word gasoline?

A. No, sir.

Q. Referring to page 286 of Government's Exhibit 77—

Mr. Swacker: We understand all this is going in over objection?

The Court: Yes.

Mr. Swacker: And exception?

The Court: Yes.

Q. State the date on which the entries were made on that page. A. January 8, 1917.

Q. Referring to an entry "Kiefer," about the middle of the page—

The Court: Now, this would be competent.

Mr. Diggs: If the Court please, we withdraw any objection.

Mr. Swacker: But we will move to strike it out as soon as it is finished. We have no purpose of trying to conceal it. That is the reason we are raising no objection until the government has gone as far as it can.

The Court: This may be competent evidence on the question of intent. This is a book that is a part of the records of the Gulf Refining Company.

A. Yes, sir.

Q. State whether that word "Kiefer" is in your handwriting? A. No, I don't think that is.

Q. You don't think it is? What was your answer?

A. No.

Q. Referring to page 330 of Government's Exhibit number 77, the item "Kiefer," on about the seventh line, and state whether that is in your handwriting? A. That was.

Q. Referring to an item over here, car number, will you explain whether—state whether you made a test of the contents of that car. A. As to gravity and color I did.

Q. What is the car number shown there? A. 1397.

Q. Can you see any evidences of an erasure there after the word "Kiefer?" A. Yes, sir.

Q. What was written in there originally, that is, what has been erased? A. Gasoline.

Q. The word "gasoline?" A. Yes, sir.

Q. Did you erase that word? A. I did not.

Q. Do you know who did? A. I do not.

Q. Referring back to the first item that you mentioned on page 272 of Government's Exhibit number 77, and to the entry Kiefer, state the number of the car. A. 1030.

Q. What is the date of the entry? A. January 1, 1917.

Q. Did you in the regular course of business, get a sample from that car and test it? A. I did not.

Q. I mean, did you in the regular course of business, receive a sample? A. I did.

Q. Which came from that car? A. I did.

Q. And did you test it? A. I did.

Q. And did you make the entry—strike that out. Referring to page 230 of Government's Exhibit number 77, state the date of the entries on that page? A. December 11, 1916.

Q. Referring to the word "Kiefer," at the top of page 270—230, rather, is that in your handwriting? A. No, sir.

Q. Referring to page 154 of Government's Exhibit 77 state whether or not near the end of the bottom of the page 154 Kiefer is in your handwriting? A. It is.

Q. State the date on which the *entires* were made?

A. November first 1916.

Q. Again referring to the item on page 276 of Government's Exhibit 77 state the number of cars according to this record from which the sample was taken?

A. The number of cars?

Q. Yes, sir, of the Kiefer Gasoline?

A. 1384, 1111, 242, 309, 1619 and 410.

Q. Referring to page 308, Government Exhibit 77, the word Kiefer about the middle of the page and state whether or not that is in your handwriting? A. No.

Q. Referring to page 276 of the Government's Exhibit 77 you have already testified that the entry about the entry about the middle page 276 Kiefer is your handwriting?

A. No, sir.

Q. Is it or not? A. It is not.

By Mr. Payne: I offer Government's Exhibit 77, in evidence.

By Mr. Swacker: We object to its receipt on the ground it is irrelevant, incompetent, and immaterial.

By the Court: Very well it may be admitted.

By Mr. Swacker: We now move to strike out all of the evidence——

By the Court: As far as it may be applicable to the certain points pointed out.

By Mr. Swacker: And move to strike it out on the ground it is incompetent, irrelevant, and immaterial, first as bearing on question of intent, inadmissible on that ground because the corpus delicti has not been established and second no offer and it has been shown where, when or by whom any erasures were made, and that in the absence of offer on the part of the Government to show when, where or by whom such erasures may have been, it is irrelevant and immaterial even on the question of intent.

By the Court: There is no dispute that these books are part of the records of the defendant.

By Mr. Swacker: Yes, sir, but they have been out of the defendant's possession three or four months.

By the Court: And been in the possession—who were they delivered to?

By Mr. Swacker: To the prosecution.

By the Court: Very well I will require the prosecution to introduce proof that they haven't changed these records. Unless this man admits that he changed them.

By Mr. Swacker: The witness has denied that he changed them.

By Mr. Payne: Does your Honor mean that I have to put Mr. Chambers and Mr. Gann and Mr. Stewart and myself on the stand for the purpose to show we didn't make those changes?

By the Court: Yes, sir, if you have had them in your charge two or three months. This evidence here is admissible and goes to the question of intent. If these books were in possession of the defendant and they turned them over to the prosecution and they have had them in their possession three months.

Mr. Payne: Why, the very facts in the case would indicate the records——

The Court: Well, I will let them argue it to the jury, then, and I won't stop them.

Mr. Payne: Well, the witness is excused for the time being.

The Court: I will let them withdraw him if they are not through with him.

Mr. Payne: Can I withdraw this witness temporarily?

The Court: Yes.

Mr. Diggs: If the court please, the defendant withdraws the objection to the admission of this book.

The Court: Very well. If they do that, that is still a fact that you have not accounted for, and I will permit them to argue it to the jury, that they were in your possession.

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EVERETT W. STEWART, called as a witness on behalf of the Government, after being first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your name, Mr. Stewart.

A. Everett W. Stewart.

Q. What is your position?

A. Special agent of the Interstate Commerce Commission, Washington, D. C.

Q. How long have you held that position, Mr. Stewart?

A. I have been special agent for three years and in the commission for six years.

Q. As a special agent, Mr. Stewart, what are your duties?

A. To examine the records, the transportation conduct of railroads and shippers generally, to see that the law regarding transportation matters are properly enforced, and report those findings to the Interstate Commerce Commission, for appropriate action as to prosecution for any violation.

Q. Referring to Government's Exhibit 77, will you state how that book came into the possession of the Government?

A. On subpoena from the Gulf Refining Company at Port Arthur, Texas.

Q. Who was that book brought in by?

A. Mr. Tryon or Abel, I don't know which brought it in there, both of these gentlemen were at Muskogee when it was presented to the grand jury in 1919, in October.

The Court: Who is Mr. Tryon and Mr. Abel?

A. Mr. Tryon is general manager of the Gulf Refining Company at Port Arthur, and Mr. Abel, assistant superintendent, so I was informed, during my investigation.

Q. As special agent of the Interstate Commerce Commission, have you ever altered the records or doctored these books?

The Court: In whose possession has it been since it was brought here and delivered by either Mr. Tryon or Mr. Abel?

Mr. Payne: We will admit it has been in the possession of ourselves or the United States Attorney's office.

Mr. Swacker: I don't say the prosecution changed the records, but they have not promised any proof that will connect up any erasures.

The Court: I will hold this is sufficient to go to the jury when they offer evidence to rebut the idea anybody else made any change, while in their possession, and then I will hold that this is a prima facie case for the jury to consider.

Mr. Diggs: If the court please, this objection made by Mr. Swacker—he was, perhaps, not as familiar with the facts as we are. I don't want to accuse these gentlemen of anything.

The Court: I know you are not accusing them, but I have supervisory powers, the fact the Government has the power to have these records, the law doesn't destroy the rules of presumption in weighing the evidence on the trial.

Mr. Diggs: But I was going to make an admission, the defendant will admit, at the time of the surrender of these books to the United States authorities at Muskogee, to be used before the grand jury, that these erasures appeared in them.

Mr. Payne: Your honor, I ask leave to ask him a couple of more questions, and then put Mr. Gann on the stand.

The Court: No, they admitted that these erasures appeared on the books, and appeared there when the books were delivered into the possession of the Government and came from their possession.

Mr. Diggs: That is all right.

Mr. Payne: That is putting the government on the defense.

The Court: No, the court is running this trial.

(Witness dismissed.)

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By Mr. Swacker: So far as I am concerned, I was not present at Muskogee and I didn't know about the condition of the books nor did I see them until they were pointed out. My motion to strike out is not based on any assumption of that kind but on the ground that there has been no effort to connect that up so as to make it competent.

By the Court: And the ruling of the court didn't carry any intimation against the prosecution. I stated in the presence of the jury, and I don't make intimations in my rulings against one side or the other. The jury are instructed that there are no intimations. If I express any opinion I will expressly tell the jury so.

By Mr. Payne: I am quite willing for the jury to draw its own inferences your honor with reference to the accusation in the case.

By the Court: I will control this.

By Mr. Payne: Alright.

By the Court: I will control this.

By Mr. Swacker: I don't think that is a proper statement before the jury. There has been no accusation in the case.

By the Court: I am making the statement now. Now I will control this. The government has the power in these Interstate Commerce Commission cases to go and get the records of the defendant and take them away from them. That don't change the rule and then if there is anything in that record that appears that they contend is a circumstance against the defendant, then when they introduce them, they would have to show it was in the same condition that it was when it came into their possession. Now they have admitted that so that ends it.

*Examination of Mr. Otie by Mr. Payne.*

By Mr. Swacker: Has your honor ruled on the motions to strike out this?

By the Court: This evidence on the ground that it is incompetent?

By Mr. Swacker: First on the ground that it is incompetent and irrelevant.

By the Court: Yes, I overrule your motion and you may have an exception.

Q. Mr. Otie, referring to page 174 of Government's Exhibit No. 78, state the date on which the entries were made



and whether the entries on that page were in your handwriting.

A. December 9th, 1916, and they are not in my handwriting.

Q. Is that word Kiefer in your handwriting?

A. No, sir. It is not.

Q. Referring to page 206 of Government's Exhibit 78 state whether the word Kiefer on page 206 is in your handwriting. A. Yes, sir, it is.

Q. Do you see any evidence of erasure after the word Kiefer? A. Yes, sir.

Q. What was the word that was originally written in there? A. Gasoline.

Q. Did you make the entry Kiefer gasoline?

A. Well, I do not know. I am not positive because there is not enough of the word gasoline there to identify it.

By the Court: Now, after you look at it under the glass what do you say about it, your best judgment?

A. It does look like mine.

By the Court: What is your judgment about it, do you think you wrote in there? Is it your judgment you wrote it there or you did not?

A. Why, it is all mine, I guess. All the rest of these figures and things are mine so the chances are that is mine also.

Q. Did you ever remember of making the entry "Kiefer"?

A. Yes, sir.

Q. Was it not your general practice on those cars from Kiefer, to write in "Kiefer gasoline"?

A. It is just a matter of form; sometimes marked Kiefer, sometimes Kiefer gasoline, and sometimes Kiefer gas.

Q. State whether you made tests of the samples from that Kiefer gasoline, and whether the gasoline—and where the gasoline was from which the samples were taken?

A. In tank cars.

Q. What were the numbers of them?

A. 1136, 2016, 1054, 1100, 1232, 1211, 1079, 1763, this is either 168 or 768, I just don't know which, 1602, 1220, and 422, that may be 23, 22 or 23, one or the other.

Q. Did you erase the word gasoline? A. I did not.

Q. Do you know who did? A. I do not.

Q. Referring to page 236, Government's Exhibit 78, the word "Kiefer," at the top of the page, is that in your handwriting? A. No, sir.

Q. Refer to page 258, of the same exhibit. Is the word "Kiefer" on that page in your handwriting?

A. No, sir, it is not.

Q. Refer to page 264 of the same exhibit, is that word Kiefer in your handwriting? A. No, sir.

Q. Refer to page 340 of the same exhibit, is that item Kiefer in your handwriting? A. It is.

Q. State the dates on which those entries were made?

A. March 13, 1917.

Q. State the car number covering those items of Kiefer gasoline?

A. 1021, 242, 1178, 1150, this is another 434, or 444; 1082; here is another, 1365 or 85, and 335, 1006, 1507, 1024, 950, 162.

Q. State whether there is evidence of an erasure after the word Kiefer? A. There is.

Q. What was the entry as originally made? A. Gasoline.

Q. In full, Kiefer gasoline? A. Kiefer gasoline.

Q. Did you write the word gasoline in there? A. Yes, sir.

Q. Did you erase the word gasoline? A. No, sir.

Q. Do you know who did erase it? A. No, sir.

Q. Referring to page 352 of Government's Exhibit number 78, state whether the items there, about the middle of the page, are in your handwriting? A. Yes, sir.

Q. State the numbers of the cars in which that Kiefer gasoline was at that time?

A. 1052, 2014, 2016, 1112, 1272, 1029, 1148, 1068, 623, 614, 621, 1049, 2022 and 251.

Q. Did I ask you about erasing that word gasoline?

A. It has been erased.

Q. Did I ask you the date of the entry?

A. March 20, 1917.

Q. Now, these cars that you have testified to, according to the records, where did they come from?

A. Why, we don't know. I don't.

Q. Well, what does the word "Kiefer" indicate there?

A. It means it came from this way.

Q. It came from Kiefer? A. Well, yes.

Q. It does, all right.

A. When they brought that kind of stuff, we usually marked it Kiefer, but we don't know whether it is from Kiefer or Africa.

Q. Mr. Otey, were you in continuous possession of these books up until October, 1919? A. No, sir.

Q. Did you leave the laboratory in 1918? A. I did.

Q. So that—and these books were left there? A. Yes, sir.

Q. You did not take them with you? A. No, sir.

Mr. Payne: I had intended to offer this book in evidence, your honor. I now offer it The other one is in.

The Court: Very well.

Mr. Swacker: We object to its admission, and move to strike out the testimony of the witness, on the same grounds as before; no effort on the part of the Government to connect up this, and it is not proper at this time.

The Court: Very well. Now, in ruling, I will rule it is conceded that this book has been in the continuous possession of the defendant up to the time that it was turned over to the government. With that, I will overrule the objection, and you may have your exception.

Mr. Payne: That is all.

The Court: We will not have time to cross examine the witness before noon. The jury may separate under the usual instructions and go until 1:45 P. M.

(Whereupon, court took a recess until 1:45 o'clock P. M.)

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AFTERNOON SESSION. 1:45 P. M.

Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following evidence was offered and introduced and the following proceeding had, to-wit:

By Mr. Gann: May it please the court, John S. Douglass is here and the government has released him and the defendant agrees that he may be released. May he be discharged?

By the Court: Very well.

By Mr. Diggs: Before we proceed I have a statement I would like to make to the court. I desire to state to the court that erasure of the word gasoline in the items forming the word Kiefer gasoline in Government's Exhibit 77 and 78 first came to my knowledge before the book was surrendered to the United States authorities at Muskogee for the use before the grand jury. My attention was directed to the erasures and explanation given to me, the erasures were made contemporaneously with the entries, and for the purpose of making them speak the truth and it was not until after the adjournment at noon today that we discovered that they were otherwise made and now for the first time we have information that leads us to believe that these erasures were made by an employee of

the Gulf Refining Company subsequent to the beginning of the investigation by the Government and we now make this statement so the court can be thoroughly informed of the actual conditions and also make it to be used as an admission in this case in so far as it may be pertinent subject to inquiry.

Mr. Chambers: I don't think that is proper at this time. There isn't any question but what that is a matter subject to explanation, but then it is a matter subject to explanation on their part as a defense. I certainly object—you said you were willing to make it as an admission—I don't believe we care to receive that as an admission, if the court please. It is a matter of defense altogether.

Mr. Diggs: I am not offering it to the jury in the trial in this case, but I am offering it to the court, so the court will understand the condition.

The Court: I will exclude that statement at this time from the consideration of the jury.

Mr. Chambers: Will you let me continue this examination for Mr. Payne?

The Court: Very well.

*Examination of the Witness Otey (Cont'd) by Mr. Chambers.*

Q. Mr. Otey, I want to call your attention to page 236 of Government's Exhibit 78, at the top of the page there where it says Kiefer, now, is that in your handwriting?

A. No, sir.

Q. You didn't write that? A. No, sir.

Q. Is there an erasure there? A. Yes, sir.

Q. And what is the word that has been erased?

A. Why, it is the word gasoline.

Q. Whose handwriting is that, Mr. Otey?

A. I do not know.

Q. Are you familiar with the handwriting generally of the employees who perform the same work that you do?

A. I am with one handwriting that is in this book.

Q. You don't know whose handwriting that is?

A. I don't know whose that is.

Q. Who had charge of that book, that is, made entries in it, besides you? A. There were quite a few.

Q. And you don't recognize—you couldn't say as to which one of them it was? A. No, sir.

Mr. Swacker: This is going in subject to our objection and exception.

The Court: Very well.

Q. I want to call your attention to page 264, where it says cars Kiefer, is that your handwriting? A. No, sir.

Q. That is a different handwriting, is it, from the other?

A. Yes, sir.

Q. And do you know that handwriting, is that one that you know? A. Well, I think I can identify it.

Q. I wish you would tell us whose that is, and where he is.

A. He is here, I think that is Koontz's.

The Court: Do you know Koontz's handwriting?

A. Yes, sir.

The Court: Seen him write it enough?

A. Yes, sir, I am almost positive that is his.

Q. And he is here? A. Yes, sir.

Q. Is there an erasure there? A. Yes, sir.

Q. What is the erasure?

A. You can't tell what it is; it is rubbed down so fine you can't tell what it is. See the ditto marks.

Q. Look through the glass, you can see that there is an erasure?

A. There is an erasure, but it is not enough to tell what it is.

Q. Have you the car numbers there? A. Yes, sir.

Q. Give me the car numbers, will you?

A. 2013, 2010, 329.

Q. Turn to page 236, back to page 236 and give me the car numbers there too, will you please?

A. 2008, 1153, 1620, 368, 953, 1359, 1718, 1055, 328.

Q. Turn to page 346 of that same book, have you got Kiefer there? A. Yes, sir.

Q. Has there been any erasure? A. Yes, sir.

Q. And what has been erased? A. I cannot tell you that.

Q. In whose handwriting is that in? A. I think Koontz.

Q. Let me look, if your eyes cannot tell maybe I can, but there has been an erasure? A. Yes, sir.

Q. What are the car numbers there? A. 1609, 1038, 1206.

Q. Now turn to page 352 of the same book is Kiefer on that page. A. Yes, sir.

Q. What—and what is the words erased after Kiefer?

A. Gasoline.

Q. Now, what are the car numbers there?

A. 1052, 2014, 2016, 1112, 1272, 1029, 1148, 1068, 623, 614, 621, 1049, 2022 and 251.

Q. And what is the date of that?

A. This is March 20, 1917.

Q. Just turn back on page 346 and tell me what is the date there? A. That is March 17th.

Q. And turn back to page 264 and give me the date?

A. That is February 6.

Q. Now turn back to page 236 and give me the date there will you please? A. January 25th.

Q. Now take exhibit 77, turn to page 291, have you got Kiefer there? A. Yes, sir.

Q. Have you got a word erased after it?

A. Well, now I don't know that.

Q. What is your best judgment in regard to it?

A. Well, my best judgment is no.

Q. Is that in your handwriting? A. No, sir.

Q. Whose handwriting is that in? A. I don't know that.

Q. What is the date? A. That is January the tenth.

Q. What is the year? A. 1917.

Q. Page 300. What is the date?

A. That is January 15, 1917.

Q. Is the word Kiefer there? A. Yes, sir.

Q. Have you got an erasure after it? A. No, sir.

Q. Whose handwriting is that? A. I do not know.

Q. You do not know whose handwriting it is in?

A. No, sir, I do not.

Q. I wish you would turn back to page 291 and state the numbers of the cars, will you please?

A. 1136, 422, 1763, 1079, 1054, 1602, 1100, 1612, 1211, 1232, 1220, 168, 2016.

Q. You have stated the date, but just give it to me again.

A. January 10, 1917.

Q. January 10, 1917. Turn to page 324, Ex. 77; have you got Kiefer there? A. Yes, sir.

Q. In your handwriting? A. Yes, sir.

Q. Anything erased after it? A. Yes, sir.

Q. What is erased after it? A. Well, you can't tell.

Q. Well, do you know what you put in after it at that time—what is the date of it?

A. This is January 29, 1917.

Q. What is your best judgment as to what you put in after January 29, 1917?

A. My memory wouldn't go back that far; I might have put gasoline, and might have put Kiefer.

Q. You would not have put Kiefer there, you had Kiefer before? A. Kiefer is there now.

Q. Kiefer is there now, but there is an erasure after Kiefer?

A. Yes, sir, there is, but I cannot say what was erased there, and I do not remember.

Q. And you cannot tell from an examination what was erased? A. No, I cannot see it there at all.

Q. What were the cars, the number of the cars there?

A. 1225, 2027, 1358, 629, 1356, 1243, 1155.

Q. Now, do you know during that time when you were receiving this commodity from Kiefer, that you were entering it on the books as Kiefer gasoline, that was the custom and system?

A. It was not the custom to enter it as Kiefer gasoline. Sometimes we called it Kiefer, sometimes call it Kiefer gasoline.

Q. Where there was an erasure, it was customary to put this Kiefer gasoline?

A. I don't know what was erased.

Q. Was that not customary with you, and have you not been doing it all these years?

A. Sometimes I have and sometimes I did not.

The Court: Where would you write Kiefer gasoline.

A. Write gasoline right by the Kiefer.

The Court: Whereabouts on the book did you designate it as Kiefer gasoline?

A. I don't know just exactly where.

By the Court: I understood him to say sometimes they designate it as Kiefer gas.

A. Sometimes we did and sometimes we just marked it Kiefer.

By Mr. Chambers: I beg your pardon I understood him to say sometimes they marked it gasoline and sometimes just Kiefer.

By the Court: I understood him to say sometimes they marked it just Kiefer gas.

Q. Well, just show us where you marked it Kiefer gasoline. A. Well, I may have to go through two books.

Q. Just show us where you marked it Kiefer?

A. Well, there is one place here they just marked it Kiefer where there is no erasure.

By Mr. Swacker: Look at page 348 in that book.

Q. Have you got Kiefer there? A. There is Kiefer there.

Q. Is there anything after it? A. No, sir.

Q. Is there any erasure? A. No, sir.

Q. What cars are those? A. 1065, 2022, 1068 and 1321.

Q. What is the date of that? A. February 9th, 1917.

Q. Turn to 324.

By the Court: Is there any place on that book where



it is called Kiefer gas; are there any entries calling-- other than Kiefer or Kiefer gas?

A. I think there is.

By the Court: Well, look and see whether there is or not. You can go ahead with this witness and he can take the book and come back later with it.

Q. Turn to page 324. The word Kiefer there?

A. Yes, sir.

Q. Your handwriting? A. Yes, sir.

Q. Erasure after it? A. Yes, sir.

Q. What was the word erased?

A. I can't tell what it is.

Q. What does it look to you like under the glass?

A. Well, it is all erased even the blue lines below it is erased. You can't tell what it is.

Q. What is the date of that? A. January 29th.

Q. What year? A. 1917.

Q. All these are 1917 in that book?

A. Yes, no--no, this book starts in 1916.

By the Court: What time in 1916?

A. Why, the first entry is August 14th.

Q. What were the car numbers? A. Of this?

Q. Of that? A. 1225, 2027, 1358, 629, 1356, 1243, 155.

Q. I hand you Government's Exhibit 6 and ask you to turn page 36 have you got Kiefer there? A. Yes, sir.

Q. That your handwriting? A. No, sir.

Q. An erasure after it? A. Yes, sir.

Q. What is erased? A. Gasoline.

Q. What is the date? A. March 9th, 1917.

Q. What are the numbers of the car?

A. 916, 911, 1607, 1610, 1061, 1209, 913, 1155, 1065--now this is either 1211 or 7211, I cannot tell which.

Q. Can you tell under the glass?

A. No, sir, has the top in here and part of it is rubbed out. 7211 is what I suppose it is. 1035, 1505, 1042.

Q. Turn to page 56 is Kiefer there? A. Yes, sir.

Q. In your handwriting? A. Yes, sir.

Q. An erasure after it? A. Yes, sir.

Q. What is the date? A. March 23rd, 1917.

Q. What are the numbers of the cars?

A. 1111, 328, 1064, 218, 1036, now here is one that a question--with a question mark on it; it is entered here as 8024, 1027, 2015, 1229, 1083, 426, 2025, 332, 1502, and 159.

Q. Did you give the date of that?

A. Wait. That 159 don't belong on there; that is different stuff altogether.

Q. Did you give the date? A. That is March 23, 1917.

Q. Page 90, have you got Kiefer there? A. Yes, sir.

Q. Your handwriting? A. Yes, sir.

Q. Erasure after it? A. Yes, sir.

Q. What is erased? A. Gasoline.

Q. What is the date? A. April 4th.

Q. What are the number of the cars?

A. 622, 1619, 629, 934, 1611, 1034, 1462, 2020, 2012, 1080, 1237, 229, and 1074. 924 is on there, too.

Q. Now, that is page 90, is it? A. That is page 90.

Q. Turn to page 148, is Kiefer there? A. Yes, sir.

Q. Your handwriting? A. No, sir.

Q. Whose? A. Why, I think it is Koontz?

Q. Think it is Koontz? A. Yes, sir.

Q. Is there an erasure after it? A. Yes, sir.

Q. What is erased? A. Can't see it.

Q. Now, that is page 148. What is the date?

A. That is April 30th, 1917.

Q. What are the car numbers?

A. 1950, 1949, 1331, 1952, 2024, 1034, 1954, 309, 1951, 2025, 1953, 1148, 1247.

Q. Page 236, Kiefer there? A. Yes, sir.

Q. Your handwriting? A. Yes, sir.

Q. Erasure after it? A. Yes, sir.

Q. What is erased? Can't tell what it is.

Q. What is the date? A. This is June 8, 1917.

Q. What are the car numbers, June 8, 1917?

A. Yes, sir, 1740, 2025, 1953, 1968, 1978, 1786, 428, 1948, 1979, 1965, 1982, 1954, 1083.

Mr. Chambers: If the court please, with your permission, I would like to submit certain of these books, that is, the pages, to the jury, so they can see the words, so they can see the condition of the books, if it would be proper.

The Court: Now, I will not permit you to do that, in view of the admission they make, that those changes were made while in their possession.

Mr. Chambers: I did not know but what it might, the jury—

The Court: Why do they want to look at them?

Mr. Chambers: I don't care.

The Court: Explanation of it—I did not admit it then that as a matter of defense, after he objected to it going in, I sustained the objection; but I will not take up

the time of the court to show an erasure that they admit they made.

Mr. Chambers: Go head with the cross examination.

*Cross Examination of the Witness Otie by Mr. Swacker.*

Q. Will you look at page 348 of Exhibit 77, and see if there is any erasure in that instrument?

Mr. Chambers: Is that the one you referred to a while ago?

Mr. Swacker: Maybe it is; there are several there.

A. No, sir.

Q. How does it read? A. Kiefer.

Q. Nothing more there? A. No, sir.

Q. What date is that? A. That is February 9th.

Q. What year? A. 1917.

Q. Now, will you look at Exhibit 78, at page 38, and see if you find any erasure there? A. No, sir.

Q. How does it read? A. Kiefer.

Q. Is there anything there or before? A. No, sir.

Q. What date is that? A. This is October 24th.

The Court: What year?

A. 1916.

Q. Now, will you look at page 196 of that same Exhibit 78, page 196, what do you find there? A. Kiefer.

Q. Is there any erasure there? A. No, sir.

Q. Anything there previously? A. No, sir.

Q. What date is that? A. This is January 6th, 1917.

Mr. Swacker: Let me have Exhibit 79, please.

The Court: Now, who made those entries? Just the word Kiefer? Whose handwriting is that in?

A. I do not know.

The Court: Do you find anywhere they are in your handwriting, where there is not something?

A. I have not so far.

Q. Now, will you look at Exhibit 77, page 300, and say how that reads? A. This is January 15, 1917.

Q. How does that read? A. Kiefer.

Q. Any erasure there? A. No, sir.

Q. The way it was originally entered, just Kiefer, without anything further? A. Just Kiefer.

By the Court: Whose handwriting is that?

A. I don't know that.

Q. You don't know. Do you know what the book is that I hand you? A. Yes, sir.

Q. What is it?

A. Why, it is the records of the distillations over and dry. Distillations will cover it all, there are some long ones and some short ones.

Q. I ask you to look at Exhibit 79 for identification at the entry on March 13, 1917, showing over 79, dry, 348, and likewise look at page 340 of exhibit 78 which your previously identified as one of the items bearing an erasure and state whether the item in Exhibit 79 for identification is the same item and if so how it reads in Exhibit 79 for identification?

A. Why, I think it is. It is under the same date as Kiefer cars that day.

By the Court: Is it the same date; is it the same date and number?

A. There is no number to this. This is an average of the samples taken that day.

By Mr. Chambers: Are those in his handwriting?

A. No, sir, that is not.

By Mr. Swacker: We have made no objection to his identifying anything even though he did not know whose handwriting it was.

By Mr. Payne: I object to this, your honor.

By the Court: On what ground?

By Mr. Payne: On the ground that it is irrelevant and in no way rebuts the presumption raised, simply was the average Kiefer cars, you can show a man made erasures in a number of instances and get the books back for ten or fifteen years and I suppose you can show a thousand instances where erasures were not made.

By the Court: I don't think that it is competent but if it shows another employee in due course called that by some other name and wrote down there, that would be competent.

By Mr. Swacker: That is exactly the purpose.

By Mr. Payne: But Kiefer cars—

By the Court: I don't think it conflicts.

By Mr. Swacker: Only so far as it shows that it was not a practice to call it Kiefer gasoline.

By the Court: What is that, let me see what that book is.

A. That is the record of distillation of our daily tests.

By the Court: I don't think that is competent, I don't think that proves anything. I will let that in as part of the record in the case but I will instruct the jury in my judgment that don't prove anything. I think that all the records that are entitled to go in to show how they kept their business. You can show whether they called it Kiefer gas by some other employee when you wrote it down, that is what I want to see if somebody wrote it down, these are the records of the concern showing how they run their business and they can put them in but I think any of the records except for that purpose, that would be *be* burdening the record.

Mr. Payne: We have other evidence which we will introduce along the line that you suggest.

The Court: They are on their cross examination. I will let that in.

Mr. Swacker: That is all I am trying to put in. I just had it marked for identification, that it might be identified with respect to the time.

The Court: I will let that in, but I will instruct the jury that in my opinion that is not entitled to any weight to prove anything.

Mr. Swacker: May I call your honor's attention to this thing in connection with that, which I think has some bearing.

The Court: All right.

Mr. Swacker: That this book contains a description not of cars, that is the only thing in it that is identified in that fashion. Everything else read gasoline distillate, South Carolina gasoline, or painters naphtha distillate or something of that sort, and my purpose of claiming its relevancy is to show that there was no officially established name used there, and this evidence——

The Court: Here is the point: don't seem to have been any effort to name it in there. Here there is an effort to name it.

Mr. Swacker: That is precisely my object in showing for an absence of a name there was no uniformity of designation.

The Court: These witnesses testified how they made their entries, and under whose direction; that is for the jury to determine, how much weight it is entitled to. If you bring that to my attention, I will instruct the jury

about the pertinency of that evidence, and how much weight, in my judgment, it will be entitled to.

Mr. Swacker: Well, then, may I ask to reserve cross examination of this witness until he may go through those books to see what other descriptions he finds?

The Court: Yes; I think if there are other descriptions shown there, and other names, I think that will be very pertinent to do that.

Mr. Swacker: May he take those exhibits?

The Court: Yes, I will permit them to be withdrawn, to be looked over.

Mr. Swacker: You make take those books, Mr. Otey.  
(Witness dismissed)

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And thereupon, O. E. ABEL was produced, sworn and examined as a witness for and on behalf of the Government, and testified as follows:

*Direct Examination by Mr. Chambers.*

Q. State your name to the court and jury. A. O. E. Abel.

Q. And you live at Port Arthur, do you?

A. Port Arthur, yes, sir.

Q. You are the assistant superintendent of the plant?

A. Assistant superintendent.

Q. You are the superintendent?

A. One of the assistant superintendents; there are three there.

Q. How long have you been there?

The Court: Of what, now?

A. The refining plant.

The Court: The Gulf Refining plant at West Port Arthur?

A. Yes, sir.

Q. I am handing you some papers, marked for identification Government's Exhibit 80, and ask you if you recognize those papers as being records of the Gulf Refining Company?

A. Well, there are no records kept out at the works.

Q. But what are those, are those the reports that you make to the Pittsburgh office?

A. Well, it is possible the Auditing Department may make them.

Q. Do you recognize that record?

Mr. Swacker: We concede that that is the record.

Mr. Chambers: I don't want a concession.

The Court: What is that?

A. Apparently it is tank car record, car numbers, gallons.

The Court: What do you recognize that as, if you do recognize it?

A. A record of tank car shipments of unrefined naphtha received at Port Arthur.

The Court: Kept by whom?

A. By the Auditing Department.

The Court: Of the Gulf Refining Company?

A. Gulf Refining Company.

Q. Did you ever see this before?

A. I saw it at Mr. Stewart's office.

Q. Is that the only time you ever saw it?

A. I do not remember seeing it—

Q. Didn't you deliver that to the government?

A. No, sir.

Q. Upon a subpoena? A. No, sir.

Q. Do you know who did?

A. I know Mr. Tryon—Mr. Tryon brought some records.

Q. You were with him when he brought them up?

A. Yes, sir.

Q. You saw them? A. No, sir, I did not see them.

Q. Where is Mr. Tryon? A. Port Arthur.

Q. Is Mr. Tryon here? A. No, sir, I have not seen him.

Q. You were with Mr. Tryon when they were delivered to Mr. Stewart?

A. Why, Mr. Tryon brought some records along with him that were in a bundle but I did not know what they were.

By the Court: You were with Mr. Tryon when he delivered the records to Mr. Stewart?

A. I was in the court building but I do not remember opening any of the records.

By the Court: How do you know he delivered records to them?

A. He brought some records along with him that he had in a package, that he had at the hotel, we understood were some records subpoenaed by the government.

Q. You recognize that as a record kept by the auditing office? A. Yes, sir.

Q. Did you help Mr. Tryon get the records together to bring them up here? A. No, sir.

Q. You had anything to do with that? A. No, sir.



Q. Are you—do you have occasion to have anything to do with the record at all?

A. No, sir, I have no connection whatever with the records in the main office.

By the Court: Did you ever see it before today?

A. Mr. Stewart showed it to me.

By the Court: Did you see it before Mr. Stewart showed it to you?

A. No, sir, not this same record.

By the Court: Do you notice that the top portion of that record has been cut off?

A. I could not say it has been.

Q. You cannot tell that it has? A. I could not say.

Q. Have you ever seen then—have you ever seen other records where those reports are made?

A. No, sir, I have no connection with the record keeping system at all.

Q. Let me call your attention—

By Mr. Chambers: Mr. Reporter, mark this as Government's Exhibit please.

(Paper marked Exhibit 81 of the government.)

Q. Do you know Mr. A. D. Morgan? A. Yes, sir.

Q. What is his business?

A. He is local auditor for the Gulf Refinig Company, that is he is not now but he was up to thirty days ago.

Q. Do you know his handwriting?

By the Court: Now, what period did that position cover as local auditor?

A. Well, he has been auditor with the company for something like eight or ten years.

Q. He was auditor May 2, 1917? A. Yes, sir.

Q. Is that letter from him, is that letter signed by him?

A. That looks like his handwriting, yes, si-.

Q. I wish you would look at the copy attached there, this tabulated statement and see if that is a copy of a portion you can refer by the date of the other exhibit that you were just testifying about—that is an original duplicate, they say?

A. I find a car which is received the same date as the car number on this sheet.

Q. Now, then, I want you—is that a duplicate original? Now I am referring to this exhibit, what is it? Government's Exhibit 81, is this a duplicate original of the other report?

By the Court: Here i- what he means by duplicate original. Both copies made at the same time.

By Mr. Swacker: One has three or four blank spaces in it and the other runs continuous.

A. Not being familiar with this record I would have to check it pretty carefully. It doesn't look to me to be the same.

Q. I will ask you to check them, go out and check each item on the two sheets. But before doing that I want to call your attention—

By the Court: That is a question for the jury to determine, what they are. I will let you prove the relationship whether they were in the possession of this company and you can offer them for any purpose and I will let you show them [ ] the jury. Unless he knows as an independent matter. You ask him his expert opinion as to whether one was a duplicate original. It don't make any difference whether they are duplicate originals or not. If they are identical copies and they are records of this company they might be admissible if they are for any relevant purpose. Ask him the question and I will pass on it.

Q. I want to ask you if the top of this page received of Kiefer, Gasoline, April, 1917, has been cut off that page and to whether the rest of the two items of the two pages are the same?

A. That appears to be different, the top was not cut off.

Q. Will you say the top was not cut off these papers?

A. That the top was not cut off.

Q. How can you tell that?

A. I see the two sheets are not identical, the spacing is not the same, I would not say they were the same.

Q. You will not say the top has not been cut off of that?

A. It is barely possible it has been.

Q. Is that not a report of the receipts of the Kiefer gasoline for that date, April, 1917?

A. It has no date on the sheet, says, April, 1917, does not give any date.

Q. Do you know where that came from?

A. Never saw that record before.

Q. Do you know where this came from? A. No, sir.

Q. That is what I *refee* to as exhibit—turn to the first page? A. Exhibit 80.

Q. Exhibit 80? A. Yes, sir.

Q. Do you know where that came from?

A. I never saw it before. I should say it is a car record of unrefined naphtha received at Port Arthur.

Q. And reported to Pittsburgh?

A. What disposition was made at Port Arthur I cannot say.

The Court: Is that the practice that they sent a report to Pittsburgh?

A. I am not familiar with the record keeping system. I have no connection with the Auditing Department.

Q. I am wrong. Is not that a Port Arthur record, and is not this the record that is transmitted to Pittsburgh by the Port Arthur office of the receipts of the Kiefer gasoline?

A. Well, not being familiar with the record keeping system, it would only be a hazard, a guess on my part.

Q. Can you tell anything by that letter?

A. Apparently there was a statement forwarded to Pittsburgh, to the Pittsburgh office, by this letter.

Q. Of the receipt from the Kiefer gasoline?

A. Yes, sir, the unrefined naphtha received.

Q. And you don't know whether Exhibit 80 is the statement that is retained in the Port Arthur office, or not?

A. No, sir, I do not.

Mr. Chambers: I think that ought to be detached from this other correspondence.

Mr. Diggs: We object to the gentleman offering papers, except in the matter—I am objecting to the attorneys for the government taking a part of the papers from the files in the connection in which they appear.

The Court: Yes.

Mr. Chambers: We offer in evidence Government's Exhibit number 81, consisting of a letter from A. D. Morgan to Mr. L. S. Haskell, General Auditor Gulf Refining Company, Pittsburgh, Pennsylvania, of date May 2, 1917.

The Court: I don't think these papers are sufficiently identified.

Mr. Chambers: Well, then we will have to have Mr. Haskell.

The Court: If there is any objection.

Mr. Swacker: We have offered to admit them, and Mr. Chambers says he don't want us to admit them. There are present here witnesses subpoenaed by them who do know what they are.

The Court: I just inquire if there is any objection to that being admitted as a record of the Gulf Refining Company?

Mr. Swacker: None in the world.

Mr. Chambers: With the letter.

The Court: Very well.

Mr. Swacker: With the letter.

Mr. Payne: I might state, we have subpœnæd Mr. Haskell, your honor——

The Court: Never mind about the statement. Offer the other one.

Mr. Chambers: Now, I offer Government's Exhibit 82. We offer Government's Exhibit numbers 81 and 82.

The Court: I understand there is no objection to either one.

Mr. Swacker: No, sir.

Mr. Chambers: That has nothing to do with these other matters.

The Court: Very well.

Mr. Swacker: There is no objection to the manner of proof, but objection is carried all along to the admissibility of this evidence at this time.

The Court: There is no objection on the ground it is not a part of the records of the Gulf Refining Company?

Mr. Swacker: No, sir, none whatever.

Mr. Diggs: We put it especially on the grounds of materiality and relevancy, without objecting to it as not being the best evidence.

Mr. Chambers: And Government's Exhibit number 83 and 84—is in the month of May, a letter dated June 2d but the exhibit is receipts for the month of May.

The Court: Very well, let it go in and they reserve an objection and an exception on the grounds of relevancy, although they are what they purport to be, that they are not relevant to any issue in this case.

Mr. Swacker: That is the idea, exactly.

The Court: Very well.

Mr. Chambers: We offer Exhibit 80 of the Government.

The Court: It goes in under the same conditions as the other.

Mr. Swacker: Very well.

Mr. Chambers: That is all with this witness.

The Court: The record shows these exhibits are read.

*Cross Examination by Mr. Swacker.*

Q. As far as you have been able to judge of those papers. who, if anybody, present at this trial do you think most likely to understand that record and know what it is?

A. I don't believe we have any one here in the Auditing Department.

Q. Is Mr. Shannon here?

A. No, sir, gone back to Port Arthur; was here and released and gone back to Port Arthur.

Q. What is his function?

A. I don't know—At Port Arthur office? Rate clerk.

Q. Rate clerk? A. Yes, sir.

Q. Examine that exhibit further, or are you able to see anything on there that would give you an idea as to whether or not he is the man that handled it?

A. No, sir, there is not, speaking of it in regard to the writing.

Q. Well, does he have charge of the car records or record of cars received? Does he check up the freight bills?

A. Yes, sir, he checks the freight bills.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Do you mean to say that this record was made up by Shannon?

Mr. Swacker: He says he doesn't know a thing in the world about the records; he is just guessing at it.

A. I do not know who made the records.

Q. Do you know who did make it out?

A. No, sir, I do not.

The Court: Who would be the eustodian of that record. What special officer or employe of the Gulf Refining Company would be the custodian of that record, in due course?

A. Well, the stock keeping department would possibly look after the receipt of cars and check against the billing. Mr. Shannon would possibly check the rate charged on the shipment, and checking the amount received, et cetera.

The Court: Now, why would that record be made—why would they go to the trouble of making that record, for what purpose would they make it?

A. Well, not being familiar with their procedure in making these records, I could not say.

The Court: Go ahead.

Mr. Payne: May it please the court, if these gentlemen will indicate who they think can identify this, we will issue a forthwith subpoena for them.

Mr. Swacker: We have no more idea than the government, but we will try to find out.

The Court: Now, they have admitted that that record is a part of the record of the Gulf Refining Company, admitted both of those exhibits, and they show what they are, and I do not see why the government wants to know any more about it. I suppose they will try to find out to see so they could get some explanations of it.

Mr. Swacker: And also to show if any explanation were needed, that if there was any such man, that the government has excused him and let him go home.

The Court: I don't think that is a proper comment.

Mr. Swacker: That was the object of the testimony.

The Court: Well, the very fact that the government excused one of these defendant's witnesses is no presumption against them on any question of fact, and especially in view of the admission of the defense, that that is a part of their record.

Mr. Swacker: I mean our inability to make any explanation.

The Court: Well, get him back here on the wire, if you can't get him, I will see that the process of this court—

Mr. Swacker: We can get him back here without process.

Mr. Payne: The redirect is over. That is all.

(Witness dismissed)

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And thereupon E. W. STEWART was recalled for further direct examination, and testified as follows:

*Direct Examination by Mr. Payne.*

Q. Are you the same E. W. Stewart that was on the stand this morning? A. Yes, sir, I am.

Q. Referring to Government's Exhibit number 80, will you state how this record came into the possession of the government?

A. It was brought to Muskogee in October by Mr. Abel and Mr. Tyron, of the Gulf Refining Company, under subpoena for grand jury purposes.

Q. I will ask you whether at the time that that record was received in the hands of the government, it was in pre-

cisely the same condition as it is now, with the possible exception of some little wear and tear? A. It was.

Q. Did these first sheets, say the first ten sheets, have any heading on them at the time that you received those records? A. They did not.

Q. Referring to Government Exhibit 81 I will ask you when this paper came into your possession, the possession of the Government?

A. They were delivered here by subpoena by counsel on the other side taken from the trunk and the papers here are in the custody of the Court.

Q. On what day was it as near as you can recall that that bunch of papers, Exhibit 81 came into the hands of the government in the manner in which you have described?

A. Either on the 12th or 13th of this month, I think on the 13th.

Q. It was after the trial had begun and the jury empanelled? A. Yes, sir, it was.

Q. Had you ever seen those records before, Government's Exhibit 81? A. I had not.

Q. When was Mr. Shannon the rate clerk that Mr. Swacker referred to excused?

A. Either Friday or Saturday of last week on request of the Gulf Refining Company's office.

Q. Shannon was released about five days before you ever saw Government's Exhibit 81, that true? A. Yes, sir.

Q. Mr. Stewart will you state in reference to Government's Exhibit 77 and 78 and 79 the circumstances under which the erasures were discovered?

A. You refer to the books I believe that were put in evidence?

Q. Yes, sir? A. The erasures were discovered——

By the Court: I don't see why.

By Mr. Payne: It has relevancy to these sheets. The connection will appear in just one moment.

Q. Just go ahead Mr. Stewart——

By the Court: I am not going—I will see, the government cannot take up time on things that have already been admitted.

Q. Go ahead Mr. Stewart?

A. During the grand jury proceedings at Muskogee, in October 1919.

Q. Were you examining those books with reference to the counts to go into the indictment? A. Yes, sir.

Q. And the counts in the indictment relate to those entries, Kiefer Gasoline? A. Yes, sir.



Q. That were erased? A. Yes, sir.

Q. Can you state that you noticed that some of these sheets, namely the one for November and December, 1916, and January, February, March, April and May, 1917, had no headings upon them, whereas beginning in June, 1917, there were headings?

A. Why sometime during those proceedings I do not recall just when.

Q. Did you attach any importance—

By the Court: As to the importance that has nothing to do with this. The mental process that worked through his mind that is not evidence here.

Q. After you had discovered that there was no headings on those sheets or rather after you had observed these erasures in the books what significance did you attach to the fact that headings on the sheets were not there?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial.

By the Court: Yes, I sustain the objection. Any significance, what he may have thought and things like that. If he notices that that is competent. He has testified that these records were in the same count. You can show them to the jury and let them see. Now as to what this man thought and revolved through his mind and things like that is not competent and I sustain the objection.

Q. Mr. Stewart, I will ask you to examine Government's number 81, and refer to the statement attached there, covering, apparently, the receipt at Port Arthur, in April, 1917, and will ask you to state on the second page of that record, what it shows to be the billing for that month?

Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, not the best evidence.

The Court: I will only permit him to do it if he testifies as an expert and has gone through that as a predicate for the convenience of the Court.

Mr. Payne: That is all.

The Court: But it will not be evidence, it is for the jury to look at it and see for themselves.

Q. Have you compared the sheet for April, 1917, in Government's Exhibit number 80, with the sheets showing their billing for the month of April, 1917, in that exhibit?

A. I have, yes, sir, as to the total gallons and the cars on the first sheet of this statement.

Q. Have you made a very careful check of that sheet and

of this sheet and are the entries in each case on both sheets the same?

A. I haven't checked them, car by car, no, sir.

Q. Have you checked them sufficient to say that they are duplicates?

The Court: No, I will exclude that. They are in evidence, and that is for the jury to determine. I will tell the jury that I do not think they are duplicates. They are made with a different machine. One is made with a dark ribbon, and the other by a green ribbon. It looks to me like one was a copy of the other, but I do not believe they are duplicate originals.

Mr. Payne: I might state Exhibit 81 is the original and this is the carbon copy, using a black carbon.

The Court: If you can qualify him as an expert, that he knows, I will let him testify.

Q. Do you know how carbon copies are made? Do you run a typewriter yourself? A. Yes, sir.

The Court: Are you an expert at that yourself?

A. I could not qualify as an expert. I use the typewriter some.

The Court: I will not let him testify unless he is an expert. You can put expert typists on and he can look at one and see whether both were made at the same time, and one is a carbon copy of the other, and if it comes to that, it would be a duplicate original, otherwise the jury can look at it and see whether they are different copies.

Q. I will ask you to hold these two sheets—

The Court: I will not let him testify, he has not qualified as an expert.

Mr. Payne: That is just a matter of common knowledge.

The Court: That is for the jury. You can show it to them.

Q. Let me get this clear, this sheet with the heading on it came to us by subpoena after this trial had started, is that correct? A. Yes, sir.

Q. And this sheet without the heading, was the one that was delivered, one of those delivered to the government at the time of the grand jury proceeding? A. Yes, sir.

Mr. Payne: All right.

The Court: You can pass it around and let the jury see.

Mr. Swacker: If it can be shown to us, we will admit it.

Mr. Payne: Never mind. Let the jury see it.

By the Court: Now we *were* not going to take up so much time, let's hurry along now.

By Mr. Chambers: Are you through with the witness?

By Mr. Payne: Yes, sir.

By the Court: Take the witness for cross examination.

*Cross Examination by Mr. Swacker.*

Q. Mr. Stewart you made an extended investigation before the grand jury proceedings in connection with this matter didn't you? A. Yes, sir.

Q. You visited the plant of the Gulf Refining Company at Port Arthur, did you not? A. I did, yes, sir.

Q. And you made a great many inquiries as to how the business was conducted there and the form of records that were kept did you not? A. Entries, you say?

Q. I say you made a great many inquiries?

A. I did, yes, sir.

Q. As to their manner of conducting their business and the way the records were kept? A. Yes, sir.

Q. You were allowed to examine the books, Exhibits 76, 77 and 78 were you not?

By Mr. Payne: I object your honor.

By the Court: That he was given access to them that is all, as to what they said to him I will not permit you to show that.

Q. You were given permission to examine and allowed to look at those books, exhibited, 76, 77 and 78 were you not?

A. I never saw those books until they were brought in to the grand jury proceedings at Muskogee.

Q. Well were you allowed to see some such books as those? A. No, sir, no such books were shown me.

Q. Were you shown some books? A. Yes, sir.

Q. What? A. The unloading book kept by Mr. Timmons.

Q. Any other books?

A. No, sir, the other statements I received were prepared by employees of the Gulf Refining Company.

Q. Did you see these sheets, Exhibit 80 there? A. No, sir.

Q. Were you shown all books that you did ask for?

A. I think so; I think so yes sir.

Q. Were you shown the records, indicating—

By the Court: I will let the evidence go this far that he was not refused any record that he asked for.

By Mr. Swacker: Alright, that is all.

(Witness dismissed)

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Thereupon, W. M. POWERS, produced, sworn and examined as a witness for and on behalf of the United States testified as follows:

*Direct Examination of Mr. Powers by Mr. Payne.*

Q. Where do you live, Mr. Powers?

A. St. Louis, Missouri.

Q. What is your present employment?

A. I am traffic manager of the Indianoma Refining Company.

Q. What was your employment prior to that?

A. I was assistant Freight Agent of the Frisco.

Q. Assistant General Freight Agent of the St. Louis, San Francisco Railroad Company? A. Yes, sir.

Q. Where did you have your office? A. St. Louis.

Q. How long did you hold that position?

A. From July 1, 1912, until April 1, 1918.

Q. Mr. Powers I show you government's exhibit No. 85 for identification and will ask you if you identify that letter?

A. I do.

Q. Having been received by you in the usual course of business? A. Yes, sir.

By Mr. Payne: I offer this.

By Mr. Swacker: No objection.

Q. I show you government's Exhibit No. 86 for identification and ask if that was received in the usual course of business? A. Yes, sir.

By Mr. Payne: I offer this in evidence.

By Mr. Swacker: No objection.

By Mr. Payne: I offer this in evidence.

By the Court: Very well, let the record show it was read.

By Mr. Swacker: We want to make a general objection to the relevancy of these as soon as he gets all of them ready to put in, but not to the copies.

By the Court: Very well, Let me see what they are, what the character of them are.

Q. I show you Government's Exhibit No. 87 for identification and ask if you identify that as having been a letter written you and sent—

By Mr. Swacker: We are willing to admit these letters were exchanged between Mr. Powers and Mr. Ellis as of the dates they bear.

A. I recognize that as a copy of our letter.

Q. You recognize that as the file carbon of the letter that you wrote? A. Yes, sir.

Q. Now referring to Government's Exhibit 86 and 87 can you state what commodity item 2546-B of supplement 40 to S. W. L. Tariff 26-T applies on?

A. As I recall it that applies on unfinished naphtha.

Q. Just to refresh your recollection of that I would like to show you a file. Refer to that file and see if your recollection is correct?

A. Yes, sir, according to this file item 2046-B applies on crude unfinished naphtha.

Q. Are you sure that is correct, Mr. Powers?

Mr. Swacker: I think if he has any doubt, we ought to object, because it is perfectly possible to prove the actual tariff, and he can refer to them.

The Court: I suggest you let him go into that and examine the tariff and you might agree.

Mr. Payne: I remember going over this with the witness the other day, and he remembered it as something else.

The Court: That is immaterial about that. There is a way to find out what this is in the tariff. I will exclude all his evidence relative to what that is.

Mr. Payne: Will you not let it go in, with the promise we will show?

The Court: I will let you show it by the tariff.

Mr. Payne: By the tariff. All right.

The Court: Because, if it is material, it ought not to go in on a doubt, when the best evidence is here.

Mr. Payne: The best evidence is right here.

Q. I show you Government's Exhibit 88, and ask you to identify that. A. I do.

Mr. Payne: I offer that in evidence.

Q. I show you Government's Exhibit 89.

The Court: Show it to the other side.

Mr. Payne: They have seen them all, your Honor. I showed this to them in advance.

Mr. Swacker: I am saving time in not objecting to them individually. I intend to object to all of them later.

The Court: All right.

A. I recognize this.

Mr. Payne: Your Honor, these two.

The Court: Before I rule on them, I want you to prove—I want the proof made as to the tariff.

Mr. Swacker: I am not objecting on that ground, but I object on the general ground that they are not relevant or material, but there being—but it being substantial time preceding the oldest count in the indictment.

The Court: Let's see it. The oldest count in the indictment is December 2nd, 1916.

Mr. Payne: Yes, sir.

Mr. Swacker: I believe there are two subsequent to that, 86 and 87 are, but the others are previous to that. No, they are all previous to that.

The Court: Now, before that is competent, you must lay the predicate by showing what that is.

Mr. Swacker: I assume the purpose of the government is merely to show along the line of the other evidence.

The Court: I won't permit this unless you show what commodity they are referring to, what commodity they shipped pursuant to that rate.

Mr. Payne: Your honor, I think that relates more to another phase of it.

The Court: Well, I will hear you.

Mr. Payne: We have shown, I believe—may it please the Court, I anticipate that this is going to be somewhat of an extended argument, and I suggest that the jury be excused for a few moments. I don't want to get any undue advantage.

The Court: Very well the jury may be excused, under the usual instructions.

(And thereupon the jury retired from the court room.)

The Court: Now, proceed. We are not going to have any of these extended arguments. All I want is to get your viewpoint.

Mr. Payne: As an essential element in the case,

necessary to be proved, we must show the intent. The objection as I understand it, is because the letters and what transpired was before the date of the offense. How can it be possible your Honor, to show intent unless we show what happened prior to the commission of the offense.

The Court: No, now you have a letter here. "I want to move ten cars of gasoline from Kiefer to Port Arthur to be handled in our own boats, to move to eastern distributing stations."

Mr. Payne: The witness may be *be* excused until the jury comes back.

(Witness dismissed)

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The Court: I will let you show what they have been moving before this letter. And then I will let you show what they moved right afterwards, if they moved anything, right afterwards, that corresponded to what they called naphtha. I will let this in, but otherwise I won't.

Mr. Swacker: We will be willing to admit, and I assume that it is all the purpose subject to our objection of relevancy, that Mr. Ellis in his correspondence did want them and ask them to publish rates upon, as he called it, upon gasoline previous to that time. We will admit it.

The Court: You have got to prove the intent as well as the purpose. The trouble you have been assuming it is gasoline. The burden is upon you to show that what they billed out as naphtha is gasoline, so don't get away from that in the trial of this case. You have got to prove what they shipped was not naphtha, and you have got to prove it beyond a reasonable doubt, and in addition to that, you have got to prove beyond a reasonable doubt that they wilfully did it.

Mr. Payne: Now, that is just the point to which this line of evidence relates. We have evidence here which shows that back in 1913, if that has not already gone in, we will put it in, the Gypsy Oil Company erected a gasoline plant at Kiefer; that they started shipping gasoline; that they shipped it everywhere as gasoline, beginning in 1913 up until December 2, 1916. All the evidence shows for every purpose it was gasoline prior to that time.

The Court: Now, I have ruled under the condition, I will let you show what the material was, if you can, that they had been shipping as gasoline, and then I will let you show what they shipped as gasoline immediately after they got this rate fixed.



Mr. Payne: Now, may I suggest that the evidence shows pretty clearly that they only have a gasoline plant, nothing else. Now, is it not a reasonable inference that when they only have a gasoline plant, that they can ship only gasoline?

The Court: That is a matter for the jury to determine. You introduced his statement. This statement says, "I want a rate for gasoline."

Mr. Payne: We can show that according to these tariffs, the rate on gasoline at the time the plant was erected was 37 cents. That Ellis—the Traffic Manager of the Gulf Refining Company made a request for a reduction in that rate on gasoline to 33 cents, which reduction the railroad granted, effective April 3, 1914. The 33-cent rate reduction became effective on that date. That later on, he endeavored—

By the Court: Then what he shipped, let him ask—then what he shipped under this rate when he asked for that.

By Mr. Payne: Gasoline.

By the Court: The same stuff you class as naphtha?

By Mr. Payne: Never shipped anything but that.

By the Court: This blended stuff is that what they shipped.

By Mr. Payne: Yes, sir.

By the Court: The only thing this is competent for is to show how they dealt with it, you are going to get at the intent for the whole case.

By Mr. Payne: Here is another phase of it your honor to show that after the 33-cent rate became effective that they made repeated effort to get the gasoline rate further reduced that he asked for a rate of 15 cents as a transit *proposition* north bound and the carrier refused to put that in.

By the Court: Very well I have told you you must lay a predicate to show how they shipped this stuff, immediately before and after, show the practice of the company of these concerns under the guiding hand of these traffic managers.

By Mr. Payne: Your Honor does not—our evidence now shows that they never have shipped anything but gasoline, they have shipped casinghead gasoline—

By the Court: I told you how I am going to rule on that.

By Mr. Payne: Will your Honor let me say a couple more words to get to the end of my story?

By the Court: Very well.

By Mr. Payne: After the thirty-three cents reduction became effective he made repeated efforts to get the rate on gasoline reduced and having failed he started in with the device of billing this stuff as unrefined naphtha, that is our case, that having made repeated efforts to get the rate reduced and having failed to get it reduced legitimately this device was resorted to to get the commodity transported at a lower rate.

By the Court: I will pass on that when you get to it. I have told you under what methods I will let that in.

By Mr. Payne: We have been under the impression we have already laid the foundation that they ship the same thing all the time.

By the Court: If you have, you have a record here, point it out. I suppose that is what you have the records here for.

By Mr. Payne: Mr. Sweet I believe testified that as far back as May 1916, they shipped the same thing? Is that correct.

By the Court: Well turn to your record.

By Mr. Swacker: I don't know what Mr. Sweet testified to.

By the Court: You had better wait and we will take this up in the morning when you have your record.

By Mr. Swacker: We do admit, we have admitted over and over and over again that immediately *preceeding* December 2nd that the identical commodity was shipped

By the Court: No, that immediately after getting the rate changed from 37 to 33 cents that they have been shipping this stuff as gasoline before and then immediately afterwards they continued to ship that—my recollection is your evidence is not specific on that. There isn't any use taking that matter up. Get your record. I mean what I am talking about. You have to point it out. I think I have a recollection of what your evidence is.

By Mr. Payne: Does your Honor recall the evidence?

By the Court: You have got to get your books and show me. There isn't any use killing time this evening. I will give you until morning to come in with your evidence and point it out. Let the jury come back.

By Mr. Payne: Before they come back we have two other witnesses to identify two letters that are very anxious to get away today. They have been here several days and live in Kansas City and want to go home for the week end and I would like to use them this afternoon.

By the Court: The way to use them is to put them on.

W. M. Powers, a witness on behalf of the government recalled.

(Whereupon the jury reentered the court room and took their places in the jury box.)

By Mr. Payne: That is all Mr. Powers.

(Witness excused)

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By the Court: Let me suggest that you search your record and if you haven't got that record you had better issue a subpoena. You might look it up and they may admit it.

Whereupon ROLLA MITCHELL, called as a witness on behalf of the United States, having been first duly sworn according to law testified as follows, to-wit:

*Direct Examination of Mr. Mitchell by Mr. Payne.*

Q. State your full name please? A. Rolla R. Mitchell.

Q. Were you general Freight Agent of the Kansas City Southern Railway Company at one time, Mr. Mitchell?

A. Yes, sir.

Q. How long were you General Freight Agent of the Kansas City Southern? A. About ten years.

Q. When did that period end? A. March 1, 1920.

By Mr. Payne: Mr. Reporter, will you mark these exhibits, 90, 91, and 92?

Q. I show you Government Exhibit No. 90 for identification and ask if you identify that as a telegram received by you in the regular course of business?

By Mr. Swacker: We will admit that it was sent by Mr. Ellis to Mr. Mitchell and received by him.

By Mr. Payne: I offer Government's Exhibit 90 in evidence.

By the Court: Very well. Let the record show it is read.

By Mr. Swacker: I am going to object to its admission on the ground of relevancy.

By the Court: Very well, you may have an exception on the grounds of its relevancy.

Q. I show you Government's Exhibit No. 91 for identification.

By Mr. Swacker: We will admit all three of the papers marked Government's Exhibits 90, 91 and 92 were sent by Mr. Ellis on behalf of the defendant to Mr. Mitchell on the date shown thereon and received by Mr. Mitchell, but we object to the admission on the ground that they are irrelevant and immaterial.

By Mr. Payne: I offer all three of the Exhibits, 90, 91 and 92.

The Court: You can have it identified and I will withhold my ruling on it for the present.

Mr. Payne: That is all at this time with this witness.

Mr. Swacker: There is nothing to cross Mr. Mitchell on at this time, until they get these letters in.

(Witness dismissed)

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And thereupon FRANK C. REILLY was called as a witness on behalf of the Government, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your name. A. Frank C. Reilly.

Q. Were you at one time Freight Traffic Manager of the St. Louis San Francisco Railroad Company? A. Yes, sir.

Q. How long had you been Freight Traffic Manager of the Frisco? A. Two or three years.

Q. When did you leave the Frisco? A. December 1, 1919.

Q. How long had you been employed by the Frisco?

A. Twenty-seven years.

Q. What was your position with the Frisco prior to the time you were Freight Traffic Manager?

A. Assistant Freight Traffic Manager.

Q. How long as Assistant Freight Traffic Manager?

A. About three years prior to that time.

Mr. Payne: Mark this Government's Exhibit 93.

Mr. Swacker: We will admit the paper marked Government's Exhibit 93 is a copy of a letter, the original of which was addressed to Mr. Ellis, Traffic Manager of the

defendant, by the witness, and J. R. Christian on or about its date, and forwarded to Mr. Ellis, but object to its admission on the ground of being irrelevant and immaterial.

Mr. Payne: I offer the exhibit in evidence.

Mr. Swacker: It is the same proposition and the same date.

Mr. Payne: No, it is not the same proposition. Let the court see what it is. It is an entirely different—

The Court: Stop this rag chewing. Have you got a reply to this letter, a copy of it?

Mr. Payne: Yes, sir.

The Court: I will not permit that to go in without the reply.

Mr. Payne: They admit it.

The Court: They admit they received it, but don't admit its competency.

Mr. Payne: Observe that the reply is already in evidence.

The Court: You mean you have offered it?

Mr. Payne: I didn't mean that in a technical sense.

The Court: Very well. You can mark them and I will pass on all at the same time.

Mr. Payne: I offer Exhibit 93 in evidence. That is all.

Mr. Swacker: We object, on the ground of irrelevancy and immateriality.

Mr. Payne: Do you have any cross examination?

Mr. Swacker: We reserve it.

Mr. Payne: That is all, Mr. Reilly.

(Witness dismissed)

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And thereupon F. A. TIMMONS, was recalled for further redirect examination and testified as follows:

*Redirect Examination by Mr. Payne.*

Q. Mr. Timmons, are you the same F. A. Timmons that was on the stand previously in this case? A. Yes, sir.

Q. I show you Government's Exhibit number 94, and will ask if this is a statement checked by you from your original record, the original records of the Gulf Refining Company, showing car number, date unloaded, the tank into which un-

loaded, and freight bill number on the various cars there enumerated?

A. They all have my signature on the bottom. They are duplicates of that book.

Mr. Payne: I offer this in evidence.

Mr. Swacker: As showing what?

Mr. Payne: As showing what it shows.

Mr. Diggs: We have consented that that paper, Exhibit 94, can be considered as showing that the facts therein stated, with the same force and effect as if the original books from which they were taken were offered in evidence.

The Court: Very well, I will admit them, but you reserve the right to object to them.

Mr. Diggs: On account of relevancy and materiality, but not incompetency.

The Court: All right.

Mr. Payne: May it please the Court, we hardly know whether to let these witnesses go or not.

The Court: Well I would not let them go. You can not turn your witnesses loose on the theory you won't need them.

Mr. Payne: This is a statement showing for each car in the indictment, the date it was unloaded at Port Arthur—

The Court: They reserve their exception to it, on the ground of its relevancy and materiality.

Mr. Diggs: We admit the statement with the same effect as the books. We stated that in the record.

The Court: Let's proceed. Let's make haste.

Mr. Payne: That is all, Mr. Timmons.

(Witness dismissed)

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The Court: My recollection is that you introduced four exhibits in writing to show the shipments prior to December 2, 1916, and the statement was made, were the shipments made prior to that date? I think that is where your evidence drives to. Go ahead.

And thereupon L. C. LYON was called as a witness on behalf of the Government, having been first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Lyon? A. L. C. Lyon.

Q. Where do you live, Mr. Lyon? A. Pittsburgh.

Q. By whom are you employed? A. Gulf Refining Company?

Q. What is your business?

A. Local auditor, sales department.

Q. How long have you held that position?

A. *Trifel* over 13 years.

By Mr. Payne: Mark this as Government's Exhibit 95

By the Court: Have you shown that to the other side?

By Mr. Payne: We have made a stipulation about that.

By the Court: Let's see that paper.

Q. Showing you government's Exhibit No. 95 and ask you if that is a statement prepared by you from the books of the Gulf Refining Company?

A. The statement was prepared by the stenographer in my office and under my supervision signed by me.

Q. Is that paper a true transcript of the books of the Gulf Refining Company.

A. It is a transcript of a portion of our record in so far as they relate to these shipments.

Q. That is all the data, that is all that data is a matter of record in your book and these statements here coincide——

By the Court: That is correct.

Q. And correct entries from the books?

A. They are not copies of entries, simply tabulated information giving the date,

Q. Is that what the books show?

A. The order numbers and so on governing shipments that we made.

By the Court: That is a correct statement of such matters?

A. Yes, sir.

By Mr. Payne: I offer that in evidence.

By Mr. Swacker: I object on the ground it is irrelevant and immaterial.

By the Court: Very well, I will admit it and you may have your exception.

By Mr. Payne: That is all.



*Cross Examination of the Witness by Mr. Swacker.*

Q. May I ask you Mr. Lyons is the heading a part of the record or did you put that heading on?

A. That is merely our heading, I think that heading was dictated by Mr. Stewart, I am not sure, at any rate that was not part of the record.

By Mr. Swacker: The part that is part of the record is below the dotted line almost across the page.

A. It is information taken from the record.

By Mr. Payne: I object, that is a written document, he can't alter a written document.

By the Court: Now I will let you prove who dictated that statement there and what position he held.

Q. Who dictated that statement at the top of that sheet?

A. I am not absolutely sure, Mr. Stewart was in my office on the day it was made and perhaps at the time it was dictated; may have been partially dictated by him or wholly by myself.

Q. That is Mr. Stewart of the Interstate Commerce Commission who was on the stand while ago? A. Yes, sir.

By Mr. Swacker: Now that is put in to show what the books would show if the books were here. Certainly that is no part of the books; it is shown that it was dictated by Mr. Stewart by the witness or by them in collaboration.

By Mr. Payne: What do the books show as to how the stock was named?

A. I wouldn't attempt to answer that question without having more papers before me; not from this.

Q. In preparing that statement did you refer to your books on blended gasoline or crude oil or something else?

A. We don't have separate books of record in my office for different products. The information in this statement was taken from our file copies of the invoices themselves.

Q. What did the invoices show the commodity to be?

A. Not having the invoices before me, I *could* not answer that absolutely but the statement says partial statements of shipments of blended gasoline without making it a matter of recollection at all I would say that probably all of these were invoiced as blended gasoline.

Mr. Swacker: Now, I am willing to admit that the invoices were made as blended gasoline, if that is what is sought to be proven by this witness. Now, I object to its admission on the ground of its relevancy and materiality.

The Court: What is it he says he is willing to admit?

The books referred to, that it was invoiced as gasoline? Are you willing to take the admission in the record?

Mr. Payne: Yes.

The Court: Very well, the admission is taken, subject to their objection as to its materiality and relevancy and they have an exception to it.

Mr. Swacker: The grounds being it was way prior to the time involved here.

Mr. Payne: We agreed to the stipulation on the ground that the defendant's counsel said that this statement could be put in, as showing what the books were, and on that promise we did not subpoena the books.

Mr. Swacker: What more do you want? We will admit anything you want that the books show.

Mr. Payne: You made no reservation at the time about the heading.

The Court: Why, this is in writing, Let's see what it is.

Mr. Swacker: We are making no reservations now. More than that, we are admitting the actual facts rather than what the books show.

The Court: Now, they agreed to admit that the books show that.

Mr. Payne: Yes. But now he is trying to say that the books do not show some part of it.

The Court: No, he objects to it on the ground of its materiality and relevancy.

Mr. Payne: He was talking about that heading. If he has gone off of that and onto something else, all right, Now, the purpose of introducing that is two-fold, to show in 1913 and 1914, at the beginning of the plant at Kiefer, they were shipping gasoline, and also to show that it is a commercial product and can be marketed direct from the casinghead gasoline plant.

Mr. Swacker: Now, we will deny the competency of that paper to prove that at all, or the books, so far as that may be concerned, but we will admit that it is a fact that we did ship and sell commercially in 1913 and 1914 products from the Kiefer plant.

Mr. Payne: And how did you sell it, and invoice it as?

Mr. Swacker: And we will admit we invoiced it as blended gasoline. I don't know that is a fact. I am assuming that you are correct.

Mr. Payne: Let the books show, they are pretty good evidence of what the stuff is.

The Court: Very well, that admission may go in the record, and you may have your exception, on the ground of the immateriality, and the irrelevancy.

Mr. Chambers: You made that same admission, only stronger, this morning, on page 266 of this record.

Mr. Swacker: If you want to whittle it down, we will whittle it down.

Mr. Payne: That is all. Any cross examination?

Mr. Swacker: No,—just one thing, yes, sir.

*Further Cross Examination by Mr. Swacker.*

Q. Mr. Lyon, you said Mr. Stewart was in your office making investigations and getting these facts from you?

A. Yes, sir.

Q. Did you give him every particular, every bit of information he called for from you? Did you show him whatever he wanted in relation to your records under your control?

Mr. Payne: I object.

The Court: I think he is entitled to show that. You raised the question that the—you raised the question, tending to offer proof showing they doctored the records. I will not permit them to say what they said, but their attitude when you are seeking that evidence, I think that is competent.

Mr. Payne: May it please the Court, I have no objection whatever to anything going in that is a fact, just so long as we are permitted to show the whole facts. If he is allowed to ask the questions, why shouldn't the government also bring out the full truth?

The Court: It will be permissible for the government to go in and show they demanded the records and they refused them.

Mr. Payne: The jury doesn't understand the situation when an Interstate Commerce Examiner calls on a person with reference to possible violations of the law, they don't appreciate what that means,—

The Court: I have ruled on this. If you want any instructions to the jury about that, you prepare them, or cautions, and I will consider them, but I think it is competent. You have shown here, and they have admitted, the records. I might get the records, and if they showed

that, if they offered to do it, I wouldn't let them prove that they went and offered to do it, but if the government demanded——

Mr. Payne: They did not demand.

The Court: Well, if the government requested.

Mr. Payne: The government requested.

The Court: Very well. Say we did that.

Mr. Swacker: Do you dispute the fact that every requirement that the government made——

Mr. Payne: Address your witness, not me.

Q. Did you furnish Mr. Stewart whatever information he asked you for, under your control in the office of the Gulf Refining Company?

A. I can't recall any information now that he asked for that he didn't get.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Do you know whether it is a fact that Mr. Davidson, the President of the Gulf Refining Company, refused to give Mr. Stewart the information that he asked for?

Mr. Swacker: Asked him for.

A. I don't know what Mr. Stewart asked Mr. Davidson for.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Do you know whether Mr. Stewart told Mr. Davidson that he had all the information that he desired?

A. I don't know.

Mr. Swacker: That is all.

(Witness dismissed)

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And thereupon WALTER MILLARD, was produced, sworn, and examined as a witness for and on behalf of the United States, and testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name. A. Walter Millard.

Q. Were you ever employed by the Gypsy Oil Company?

A. I was, yes, sir.

Q. In what department? A. Gasoline department.

Q. At what plant? A. Kiefer.

Q. How long were you employed in the Gasoline department of the Gypsy Oil Company at Kiefer?

A. From February 16th to November, 1918.

Q. From February 1916? A. 1914.

Q. To when? A. November 1918.

Q. What was the various positions that you held in the plant, Mr. Millard.

A. Assistant Superintendent and Superintendent.

Q. Did you enter the plant as assistant Superintendent?

A. Yes, sir.

Q. You were assistant Superintendent back in 1914?

A. Yes, sir.

Q. In May, 1914? A. Yes, sir.

Q. During the time that you were in the plant, Mr. Millard was there any material change in the general methods and manner of manufacturing?

A. No, sir, it was all manufactured by compressing methods, gasoline was made there.

Q. From casinghead gas? A. Yes, sir.

Q. Did you have—will you state briefly just what the method briefly of producing your product was?

By the Court: Now that is in the record, that that is a compression plant.

By Mr. Swacker: And always was.

By the Court: Exclusively a compression plant and that they by the system of compression converted the casinghead gas *gas* after they brought it from the wells into the product which the government claims is gasoline. Can you prove by him now there was not any change in that business from what time did you go there?

A. 1914.

By the Court: And continued up to when?

A. 1918.

By the Court: Alright. Was the product shipped from Kiefer and where to?

A. Most of it shipped to Port Arthur.

Q. Was it shipped anywhere else?

A. 1914 it was shipped to *various* places.

By the Court: And also Port Arthur too?

A. Yes, sir.

By Mr. Swacker: By the way I wish to report on an investigation. I was to have Mr. Sanderson make this

morning. We admit so much of the product as was shipped north to destination such as St. Paul was in 1913 and 1914, and 1915 shipped to Port Arthur.

By Mr. Chambers: And the same commodity?

By Mr. Swacker: No, I am not admitting it was the same product.

Q. I intended to ask you if it was shipped to Pittsburgh at all? A. During that time?

Q. At any time? A. Yes, sir, to the Pittsburgh plant.

Q. Was there any material difference in the product shipped to Pittsburgh, and the product shipped to Port Arthur?

By Mr. Diggs: We object, incompetent, irrelevant and immaterial and calling for the conclusion of the witness to show if there was any material—if there was let him state.

By the Court: Yes, I think the objection is well taken.

Q. Was the product casinghead gasoline blended with naphtha?

A. During that time?

Q. Well take from the beginning all the way through?

By the Court: 1914 when you went there?

A. Yes, sir.

Q. Was the product shipped to Pittsburgh, the casinghead gasoline blended with naphtha through the entire period?

A. Yes, sir.

By the Court: You mean that was the product in 1914, shipped to Port Arthur, too?

A. Yes, sir.

By the Court: During that period shipped the commodity without blend to Port Arthur in 1914?

A. No, sir, all blended.

Q. How about 1915?

A. I do not remember shipping but one car from Kiefer that was not blended, I believe it was one experimental car.

By the Court: Where to?

A. Pittsburgh.

By the Court: Now what was it blended with in 1914 and 1915?

By Mr. Swacker: Percentage of blend?

A. Percentage varied.

By the Court: In what way?

A. Depend upon the vapor tension, mostly.

By the Court: But the blend was naphtha?

A. The blend was naphtha.

By the Court: And it varied in accordance with the vapor tension?

A. The vapor tension and the requirements needed.

By the Court: Was that the way in 1916 too?

A. Yes, sir.

By the Court: 1914, 1915, and 1916?

A. Yes, sir.

Q. It was also blended afterwards it was blended throughout the entire period as I understand you to say? A. Yes, sir.

Q. When you answered my question when I asked you throughout the entire period you understood me to mean throughout the entire period that you were employed in the plant? A. Yes, sir.

Q. How were shipments billed for transportation purposes, prior to December 2, 1916?

By Mr. Swacker: We object on the grounds of irrelevancy and immateriality.

By the Court: Very well, you may answer.

A. Billed it, I believe all billed as gasoline.

By the Court: All billed as gasoline?

A. To the best of my recollection.

Q. How was it billed after December, 1916?

A. As unrefined naphtha.

Q. Did you receive instructions from your superior officers to change the manner of your billing? A. Yes, sir.

Q. What were those instructions?

A. They were contained in a letter I received to bill it as unrefined naphtha.

Q. To bill it as unrefined naphtha? A. Yes, sir.

By the Court: Who did you receive the letter from?

A. W. P. Donovan, the general superintendent.

Q. So that is a fact there was no change in the commodity but only a change in the name? A. That was all.

Q. Did you receive any previous instructions as to how to ship the commodity? A. Yes, sir.

Q. What were those instructions?

A. The instructions were to tell the Frisco agent that I was about to ship it as unrefined naphtha and for him to look up the tariff.

Q. I mean when you went there?



By the Court: When did you have those instructions?

A. Those were a few days previous to December 2, 1916.

By the Court: You mean prior to that?

Q. I mean did you receive any instructions to bill it as gasoline?

A. No. it was being billed when I went there and they continued that method.

By the Court: What has been your observation, Mr. Millard, in reference to the effect of weathering in reference to lowering the vapor tension and lowering the gravity?

A. In what way do you mean?

By the Court: I mean specifically will weathering accomplish those two purposes.

A. Yes, sir, at a loss.

Mr. Payne: Q. And the purpose, the same result accomplished by blending and weathering, except that there might be a difference in the loss?

A. The blending and the weathering would make less loss.

Q. You mean the blending would cause less loss than the weathering? A. A little.

Q. How do you mean?

A. Suppose you have it weathered down to a certain vapor tension,—

Q. You mean loss by vapors? A. Yes, sir.

Q. Suppose you had 75 gravity casinghead gasoline, if that were allowed to stand without anything being done to it, would the gravity of it decrease down to 60 in time?

A. Not without a great deal of loss.

Q. I mean, regardless of the loss, that result would be accomplished, is that correct? A. Given sufficient time, yes, sir.

Q. What would you say? A. Given sufficient time.

The Court: It would depend on the temperature, too?

A. And the temperature, also.

Q. In hot weather would it be quicker?

A. Yes, it would lower quicker.

Q. It would lower quicker? A. Yes, sir.

Q. Mr. Millard, was the plant at Kiefer equipped with what is called scrubbers? A. Yes, sir.

Q. Will you explain, briefly, what those scrubbers are, and what the purpose is?

A. They catch any moisture or condensation coming in with the gas before it gets to the compression.

Q. Wait a minute. I don't know whether they understood your meaning. The gas coming from the other plant?

A. From the field.

Q. Did you get the gas by a vacuum method?

A. No, sir, the gas pumps into the plant.

Q. And now was this,—is it a fact that these scrubbers, that the gas first went into, is the scrubbers? A. Yes, sir.

Q. Can you describe briefly just what those scrubbers were like?

A. Just a plain vertical tank, about four feet in diameter, about ten feet high.

Q. Was there anything in them? A. No, sir.

Q. Baffle plates? A. No, sir.

Q. How did the gas come into that tank, at the top or the bottom? A. The center.

Q. Now, where would it go out? A. At the top.

Q. What was the purpose of that arrangement?

A. To catch any condensation of moisture that might come with the gas.

Q. Would it also catch any oil that might be in the gas?

A. Yes, sir.

Q. Or any sand? A. Yes, sir.

Q. Or any other foreign matter? A. Yes, sir.

Q. Mr. Millard, was the plant at Kiefer, did it produce water white gasoline?

Mr. Swacker: I object, unless—

A. Mostly.

Q. Under what circumstances would the plant produce anything but water white gasoline?

A. They—may have been a little oil got in the line from a flowing well and put it off color.

Q. You mean when some of the crude oil should happen to get into the machines, into the compressing machine?

A. No, sir, coming from the field, the gas coming from the field, from the wells.

Q. I don't quite understand you. Will you make that a little more definite?

A. The gas coming from the wells may bring some oil in with it from the oil sand into the plant.

Q. And that might get into the casinghead gasoline and discolor it? A. Yes, sir.

Q. Wouldn't your scrubbers catch it?

A. Not all of it; some times it would get through.

Q. Now, was the stuff water white, generally, or was it generally not water white? I mean, how often would it occur that you would get some off color gasoline?

A. Not very often.

Q. Was it just the result of an accident when you did?

A. Generally.

Q. What did you do with that off color stuff?

A. We generally shipped it by itself. Kept it separate when possible.

Q. Would you ship that in a clean car, or a dirty car?

A. Sometimes clean, and some times dirty.

Q. What is the difference? What difference does it make ordinarily, whether you ship in a clean car or a dirty car?

A. None whatever, except it will keep the clean separate from the dirty gasoline.

Q. You mean by dirty car, a car that was used to transport crude oil or fuel oil?

A. Sometimes we get a dirty car and we have off color gasoline, and we ship it in the dirty car to prevent soiling another one.

Q. Did you always ship, with the exception you have mentioned, ship your stuff in clean cars?

Q. Yes, sir, unless we happened to get dirty cars in.

Q. Did you clean the dirty cars? A. Yes, sir.

Q. State the reasons why you always shipped your product in clean cars?

By Mr. Swacker: He did not say he always shipped them in clean cars.

By Mr. Payne: With the exceptions stated, I don't want to be technical.

By the Court: As a rule.

A. Because I had clean cars there and did not have any dirty ones to ship in.

By the Court: When you had dirty cars there did you ship them in dirty cars or clean them out?

A. Generally cleaned them out.

By the Court: Why did you go to the trouble of cleaning them out, what was the purpose?

A. To keep the gasoline clean.

By the Court: Why did you want to keep the gasoline clean?

A. I was following instructions.

Q. You were following instructions? A. Yes, sir.

Q. Suppose the gasoline got dirty how could that situation be remedied?

A. That would be remedied at the refinery.

Q. Do you know how?

A. No, sir, I am not familiar with the refining end.

Q. On whose instructions were the clean cars provided?

A. That I don't know.

Q. Who instructed you to use clean cars for the transportation of the stuff?

A. I was not instructed what cars to use, the cars were sent to me.

Q. Did you receive instructions that when dirty cars came in and you should want to ship out your water white product in it you would clean the cars?

A. I did get instructions to clean them generally.

Q. From whom? A. Mr. Donovan.

Q. Now in reference to what you have testified to concerning the cleaning the cars was that true of the whole period that you were there? A. Yes, sir.

Q. Mr. Millard were you also in charge of the Jenks plant? A. Yes, sir.

Q. Was that the same kind of a plant?

By the Court: You mean that you had charge of both plants at the same time?

A. Yes, sir.

Q. Is that the same kind of a plant as the Kiefer plant?

A. A compression plant.

By the Court: They were both compression plants?

A. Yes, sir.

Q. Was it the practice to blend this casinghead gasoline at Jenks? A. No, sir.

Q. Did you ship that undiluted? A. Yes, sir.

Q. How was that billed?

A. Billed as unrefined naphtha to the best of my knowledge.

Q. When was the plant erected at Jenks? A. In 1916.

Q. When did you start to ship from Jenks?

A. That I couldn't tell from my memory.

Q. By the way when was the plant at Kiefer erected?

A. Started some time near the end of 1913 or early part of 1914.

Q. You spoke of losses from weathering and I understood you to say that you weathered the stuff at Jenks?

A. Yes, sir.

Q. Was there much loss there? A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. There was some loss? A. Yes, sir.

Q. Generally speaking was the product obtained at Jenks similar to the product obtained at Kiefer? A. Yes, sir.

Q. That is it was water white most of the time?

A. Yes, sir.

Q. On whose instructions, if anybody did you ship the undiluted casinghead from Jenks as unrefined naphtha?

A. If anybody, Mr. Donovan.

By the Court. What is your best recollection as to whether you were instructed to ship?

A. Remember being instructed from Kiefer but I do not remember being instructed to ship from Jenks.

Q. Mr. Millard you referred to some gasoline that was marketed direct from Kiefer and shipped from Kiefer to customers did you not? A. Yes, sir.

Q. How was that billed? A. I believe as gasoline.

Q. State the difference between that product shipped direct and the product shipped to Port Arthur?

A. At that time?

Q. Yes? A. The only difference was in the gravity.

Q. What was the difference?

A. That I could not tell. The different customers call for different gravities in their orders, and the product was made to meet those orders.

Q. Now, is it a fact that the gasoline which you shipped direct to the customers, and sold on the market as gasoline, is it a fact that the only difference between that and what you ship to Port Arthur, was that the gasoline marketed direct was blended with more naphtha?

A. I do not remember the exact amount of naphtha it was blended with. The only difference was in the gravity.

Q. How could you control the gravity? A. By blending

Q. Well, now, suppose, for example, that you had a seventy gravity casinghead gasoline, and wanted to produce a sixty gravity gasoline for the purpose of being marketed direct, how would you accomplish that result?

A. By using naphtha.

Q. By blending the casinghead with naphtha?

A. Yes, sir.

Q. Now, suppose you wanted to get the gravity to, say fifty-eight, instead of sixty; how would you accomplish that?

A. Use more naphtha.

Q. Add a little more naphtha? A. Yes, sir.

Q. Now, was there anything else done to the gasoline that was sold direct besides blending it with naphtha? A. No, sir.

Mr. Swacker: We would like an objection and an exception to all this testimony, on the ground of irrelevancy and immateriality. I just did not want to interrupt him.

The Court: Very well. You may have your exception to it.

Mr. Payne: That is all. You may cross examine.

*Cross Examination by Mr. Swacker.*

Q. You say you put this—when was this stuff sold direct to the customers? A. 1914.

Q. And you say you put it in marketable condition by the addition of more naphtha, or how?

A. It depend- on what you call marketable condition. If sold in tank cars—

Q. You meet the particular purchaser's requirements?

A. Yes, sir.

Q. They would specify to you which blend to meet the particular order?

A. No, sir, the gravity would be given. No specification as to the manner of blending.

Q. You would have the specification designating the gravity to meet? A. Yes, sir.

Q. And you would control the blending to produce that gravity? A. As near as possible.

Q. Weren't those all very much lower gravities than the material you shipped to Port Arthur?

A. That I could not state from memory, what the gravity was.

Q. You were asked awhile ago what would happen to weather, if you allowed it to weather long enough, it would evaporate altogether? A. I expect so.

Q. This material is extremely volatile? A. Yes, sir.

Q. And it takes but a short time to evaporate altogether?

A. Yes, sir, some of it.

Q. Suppose you would put it in an open cup, such as used for evaporation tests, how long would it take to evaporate?

A. I don't know. I never run an evaporation test that way.

Q. When you have referred to this as being water white, water white with the naked eye or broken bottle?

A. Naked eye.

Q. You did not put the color test machine on?

A. No, sir.

Q. And you don't know whether it was in fact actually water white? A. No, sir.

Q. You know that there is a machine used and necessary in order to determine whether material is water white, do you not? A. Yes, sir.

Q. Now, is it not a fact that the material also frequently gets discolored in the tank after it has been liquefied.

A. No, sir.

Q. Due to rust or anything of that sort?

A. No, sir; rust won't discolor it.

Q. Well, then, due to the naphtha blending material being discolored? A. Yes, sir

Q. Now, then, these tanks you call scrubbers, they are in fact not scrubbers in a technical sense? A. No, sir.

Q. Just simply a mechanical contrivance to knock down any liquid or hard matter, such a sand, and if that matter was allowed to go on into the compressor it might knock a piston head out, might it not?

A. Yes, sir, that is the purpose of the scrubber.

Q. The gas is going into a compressor, and if these particles were allowed to go in, it might burst the compressor?

A. The liquid would, yes.

Q. These tanks might be and properly are called separators, are they not?

A. We always called them *meeter* tanks in the plant.

Q. *Meeter* tanks? A. Yes, sir.

Q. You weathered all casinghead whether you blended it or not, didn't you, before blending?

A. Yes, sir, after blending.

Q. After blending? A. After blending.

Q. Did you weather some before *blening* as well?

A. No, sir.

Q. Now you started to say something about having notified the Frisco agent before beginning shipping as unrefined naphtha a few days before the date that you began that you were going to begin describing the product as unrefined naphtha? A. Yes, sir.

Q. How did you come to do that?

A. I was instructed to do that.

Q. You were instructed by whom?

A. Then general superintendent, Mr. Donovan.

Q. To notify the Frisco agent that after December 2nd the product would be billed as unrefined naphtha?

A. Yes, sir.

Q. Now the Jenks plant didn't start shipping until in April, 1917, did it? A. I could not say.

Q. Well, sometime subsequent to December 2, 1916?

A. Yes, sir.

By Mr. Swacker: That is all.

*Redirect Examination.*

By Mr. Payne: Mark that as exhibit 96 please.

*By Mr. Payne.*

Q. Mr. Millard, I show you a bottle containing a fluid and will ask you to state what color you would call that.

A. I could not give the color in this light, unless it was daylight I would not be able to judge it at all. This light is a yellow light.



Q. Is that a better color or not as good a color as you would call water white?

A. That I could not say unless you had the two to compare with. You cannot compare one with nothing.

Q. Will you take it over to the window and see

A. Not unless you can give me something to compare it with.

Q. What do you want to compare it with?

A. Whatever you want to compare it with but you cannot compare that with nothing, you have to have something to compare it with.

Q. I understood you to say you made the color test with the naked eye.

A. Yes, sir, always had something to compare it with. Take water if you want to compare it with water white.

Q. Always compare it with water?

A. Not always with water but something I knew was good color, might be a water white as near as I could get it.

Q. Did you—does casinghead gasoline look about like that?

By Mr. Swacker: I object as being irrelevant and incompetent and immaterial.

The Court: I sustain the objection.

By Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Is it a fact if that bottle was full that color would be different? A. Yes, sir.

Q. Would be darker, wouldn't it?

A. I could not say as to that.

(Witness dismissed)

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By the Court: Now we have only got ten minutes. Have you got any witness you can get through with in ten minutes.

By Mr. Payne: The next one will take some little time. Just before we adjourn I move the court the exhibits referred to a few moments ago be admitted in evidence.

By the Court: I will admit them.

By Mr. Swacker: May we have an exception on the ground of their being irrelevant and immaterial.

By the Court: Yes, let the record show that and let the record show they are considered read.

By the Court: Gentlemen of the jury, I instruct you to begin with that you must not decide the case only under the weight of the evidence and that until after you have heard all of the evidence and the argument and the instructions of the court. A juror is to keep his mind open and in receptive frame and not make up his mind on any particular part of it whatever, endeavor to remember all of the evidence and keep it in mind. You will be permitted to separate under the instructions I have heretofore given you. You may now go until tomorrow morning at nine-thirty. Whereupon the jury retires.

(Whereupon court took a recess until tomorrow morning at nine-thirty.)

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(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be present and counsel for plaintiff and counsel for the defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

By Mr. Swacker: Last night we admitted in evidence correspondence of Mr. Powers, Mr. Reilly and Mr. Mitchell, whose cross examination we had reserved. May they now be recalled.

By the Court: Very well, Mr. Powers may be recalled. Have you made any agreement about the rate as to form 35?

By Mr. Payne: What?

By the Court: Have you made any agreement about the proof of form 35 referred to in one of the letters?

By Mr. Payne: We are going to put our rate man on the stand this morning.

By the Court: Show the rate to the other side and see if you can agree on it. I will do it right away.

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By Mr. Swacker: Call Mr. Powers.

Whereupon, W. M. POWERS, a witness on behalf of the government was recalled for further cross examination by Mr. Swacker.

By Mr. Swacker: We don't intend to touch anything on cross examination of this man with reference to the rate of form 35.

*Cross Examination by Mr. Swacker.*

Q. Mr. Powers, between 1913 and December, 1916, did you have several conferences with Mr. C. B. Ellis, the traffic manager of the Gulf Refining Company?

A. I had several conferences with him, I don't know how many.

Q. What was the general subject of those conferences?

A. Relating to the readjustment of the rates on petroleum products.

Q. From where to where?

A. From points in Texas to Kiefer and Kiefer to points in Texas.

Q. Now, was it originally from Fort Worth to Kiefer and Kiefer to Port Arthur?

A. Originally from Fort Worth to Kiefer.

Q. What products did Mr. Ellis explain to you rate, he desired rates upon? A. On low grade naphtha.

Q. Did he make any explanation to you of the character of rates he considered he was entitled to have on that naphtha?

A. He originally asked for a transit rate.

Q. Will you explain to the court and jury what a transit rate is?

A. A transit rate is a rate that is to cover a portion of a haul on a commodity which we will say originates at Fort Worth, passes through to Kiefer, stops at that point for re-handling and then sent forward to some point beyond Kiefer.

Q. And is there some special principle involved in rate-making to apply to situations of that character?

A. Well, as a rule, the rate effective from point of origin to final destination plus a certain charge for stopping in transit applies.

Q. Well, does the rate from point of origin to point of rehandling, is it lower than the ordinary local rate in such cases?

Mr. Payne: I object, your honor, because that goes to the reasonableness of the rate which cannot be inquired into in this proceeding.

Mr. Swacker: I am not going to the reasonableness. I am merely going to the principle involved, that is all.

Mr. Chambers: It isn't proper cross examination.

Mr. Swacker: They put in the correspondence.

The Court: Well, I think that is proper cross examination. I will confine you in cross examination as to whether or not those rates refer to specific conferences, and I will confine you to the conferences.

Q. These letters that were shown you yesterday and that you identified relate to the subject-matter of the conferences about which I have been inquiring of you, did they not?

A. Yes, sir.

Q. Now, will you answer the question that I asked you previously, that is, if it is not the custom in making such transit rates, to make them lower than the local, the ordinary local rate between those points?

The Court: Now, they object to that. Now, why do you object to that, Mr. Payne?

Mr. Payne: On the ground that under the statute, the rates fixed in the tariff have the binding force of law, and, as long as they remain in force, must be applied. That any shipper believing those rates to be unreasonable has a right to complain to the Interstate Commerce Commission, but if he departs from the established rate, he has committed a violation of law. My objection rests on the ground that we cannot in this case go into the reasonableness.

The Court: Now, let's see, what is the object of this question.

Mr. Swacker: We are not seeking any departure from the tariff rates, but on the contrary that the tariff rates published was published especially to cover this traffic.

The Court: Repeat that.

Mr. Swacker: I am not trying to go into the reasonableness of the rate at all, but simply to show by this witness that the rate that was published effective December 2, 1916, was put in especially to cover this traffic under the circumstances explained to the carriers at that time.

Mr. Payne: We object to that, your honor, on the ground that they cannot go into what the intention of the framers of the tariff was; the railroads published the tariffs and put them out to the world.

The Court: I don't think that the principle that the transit rate is lower than where you ship it and reship it without the transit rate. I do not see the materiality of it.

Q. Well, Mr. Powers, did Mr. Ellis, at this earlier time that you have spoken of concerning rates on naphtha north-bound make any explanation to you of what was proposed to be done with the product when it should leave Kiefer?

A. It was moved from Kiefer to Fort Worth for—rather, Port Arthur, for further handling.

Q. Well, I am speaking now at the time when he was seeking the rate northbound from Fort Worth; did he indicate to you what was proposed to be done with the traffic when it should leave Kiefer at that time?

The Court: Now, they are charged here with mis-billing. Now he can show that in that conversation that he was seeking to get a lower rate, and that he told them that he wanted a naphtha rate. I will permit him to prove that. That would be competent in this case; in that conversation he explained to him that he wanted an unrefined naphtha rate and explained to him that he could ship this commodity under that. I will let you prove that.

By Mr. Swacker: That is what I would like to do.

Q. Will you explain Mr. Powers, will you state what explanation Mr. Ellis made to you?

By the Court: I will let you ask him on cross examination whether Mr. Ellis pointed out to you that if he got a naphtha which would be a reduced rate from the rate on gasoline that he could ship a commodity that he had formerly been shipping as gasoline, as unrefined naphtha, did he tell you that in those conversations, that these telegrams and letters referred to?

A. The question relates to the initial establishment of the rate from Fort Worth to Kiefer.

By the Court: In any of those conversations that those telegrams and letters relate to show him the telegrams and letter.

By Mr. Swacker: The question I have asked him is with reference to an early phase of the situation. If I may change it.

By the Court: I will not permit you to cross examine on any conversations except with reference to the telegrams and letters related to here.

By Mr. Swacker: We will show that this is all one part of one negotiation and that is why I started back in 1914 to show that, it is all one part of the negotiations.

Q. Are you familiar with the contents of the letters you saw here yesterday?

By the Court: Let me have them.

By Mr. Payne: Mr. Swacker will have to point out what he is referring to.

By the Court: Here is one on January 19th, 1915, here is a letter from.

By Mr. Swacker: Christian and Reilly.

By the Court: Sunset Line and the Frisco Line and he says referring to the conversation yesterday morning concerning your application for rates of fifteen cents on naphtha from Port Arthur to Kiefer as a traffic proposition, that is a conversation that occurred on January 18th, that fixes that?

By Mr. Payne: Yes, sir.

Q. Disregarding the previous question I asked you about the situation in 1914 and starting with this letter will you state what the negotiations were and what explanation was made to you by Mr. Ellis of the rates desired for the movement of naphtha, northbound, from Port Arthur to Kiefer and southbound from Kiefer to Port Arthur?

A. Mr. Ellis explained that he had a quantity of low grade naphtha at Port Arthur which it was his desire to move to Kiefer providing the rates would be established that would warrant moving it up there and working it through the Kiefer plant and then moving it back to Port Arthur and then reworking it again and putting it on the market.

Q. Did he explain to you the occasion for taking it back to Port Arthur, the reason or necessity for doing so?

A. It was that it required some further handling before it could be sold commercially.

Q. And did he ask for the establishment of special rates to cover the commodity on that account? A. Yes, sir.

Q. What rates did he ask if any?

A. The first proposition was to establish rates which were effective to Tulsa. There was a high rate effective from Port Arthur to Kiefer, I believe, it was 43 cents.

By the Court: 43 cents on what?

A. Gasoline and everything headed in the western classification under petroleum products.

Q. Which would include naphtha?

A. Yes, sir. Now those rates were kept high from Texas to Frisco, Oklahoma points because there was an urgent demand for reduction. The Oklahoma state rates, rates outside of the state were made lower and the Friscoe Railroad considered its revenue as a whole was coming from Oklahoma on traffic and not from the interstate traffic. A rate was put in from Port Arthur to Kiefer, I believe of 33 cents and the same rate was established from Kiefer to Port Arthur because that was the Kiefer New Orleans rate and the rate from Oklahoma to Texas had been carried on what we call a group basis for many

years because there had been no movement. The Oklahoma refiners could not get into Texas as against the local Texas refineries and the rates were allowed to drift in the tariffs as they were. At that time the freight movement on the line from Sapulpa to Texas, this traffic gave us an opportunity to handle tank cars loaded both ways, something very unusual in the movement of petroleum products, there usually being one hundred per cent empty movements. The tanks move one way loaded and return empty.

The Court: That fixed it so you would have a very small per cent of empties?

A. No empty movement at all under this arrangement.

Q. Well, go on with the proposition the court asked you, as to what he asked you to establish in the way of rates, and also state the basis or justification.

A. Well, I believe that explains the justification for the rate that was established for the rate of thirty-three cents.

Mr. Payne: That is getting pretty—

The Court: Yes. I don't think the justification has got anything to do with it. The reasonableness of it. They cannot violate it and come into a court and join an issue on such a fact, and I will instruct the jury that the reason for the rate has got nothing to do with this case.

Mr. Swacker: I have no idea of arguing that.

The Court: Well, I am instructing them that they will not consider the justification or the reasonableness of the rate. The only thing now is as to the question of intent. Now, they have introduced his letter where he referred to it as gasoline. Now, if there is anything to show that he contemplated and in the negotiations he pointed out to them that they could make an unrefined naphtha rate and they could re-ship it at this, I will let them prove that.

Mr. Swacker: That is just what I want to get to.

Q. Did Mr. Ellis—you stated he made an explanation to you that it was a product of low grade naphtha that was to come up from Fort Worth to Kiefer and that there it would be rehandled and returned to Port Arthur and be further rehandled before it should be marketed. Now, did he continue those representations to you subsequent to the establishment of this thirty-three cent rate in an effort to get you to establish a lower rate than that?

The Court: No, what he said there in that conversation.



Q. What did he say in that conversation?

The Court: January 18th, and in that conversation touching these letters referred to.

A. Well, in the conversation that referred to the rate——

The Court: You refer to that conversation now?

A. Yes, sir. Referring to the rate that was established at Baton Rouge on unrefined naphtha, that rate was proposed, and it was objected to by a number of railroad companies, including the Frisco.

Mr. Chambers: We object, as not being a part of the conversation.

The Court: As to what the Frisco said, under your objection, I exclude. What they want is what he said to you, what in the conversation of January 18th, did he propose a rate on unrefined naphtha of January 18th?

Q. Did Mr. Ellis propose to you——

The Court: Did he propose or ask for a rate?

A. Yes, sir.

The Court: Did he tell you what he could ship under that rate, in that conversation?

A. Said he was going to ship naphtha.

The Court: Go ahead.

Q. Did he make the explanation you have heretofore stated in relation to it?

A. That it was a low grade article to be shipped and treated and re-shipped.

Q. Yes, sir, to Port Arthur to be further finished.

A. I understood that was to be done, yes, sir.

Mr. Swacker: Now, may I ask if he established a rate finally based on those representations?

The Court: No, I will not permit you to prove that.

Mr. Swacker: All right. That is all.

*Redirect Examination by Mr. Payne.*

Q. Mr. Powers, did you ever establish the refining in transit rates Mr. Swacker referred to? A. No, sir.

Q. Was there, as a general proposition, a refining in transit rates on oil?

A. There are transit arrangements on petroleum oil, and it is widely practiced on cottonseed oil.

Q. On naphtha and gasoline, can you point me out a single instance where there is a refining in transit rate, as that ex-

pression is known in the railroad world, that is a transit rate on naphtha and gasoline, whereby you can ship a naphtha and blend it with gasoline and ship out the finished product and apply the through rate from the origin to the final destination?

A. There is such an arrangement in effect in Toledo and Findlay and Lima, Ohio.

Q. Are the rates to and from Kiefer transit rates, is there any such arrangement in effect at Kiefer? A. No, sir.

Q. Do you understand the nature of oils and the different kind of oils, Mr. Powers?

By Mr. Swacker: We object to that, certainly nothing to do with cross examination.

By the Court: I didn't understand the question.

By Mr. Payne: I asked if he was familiar with the different kinds of oils, if he knew the different characteristics of the different kinds of oils.

By the Court: How would that be proper redirect? You first have to show him an expert to go into it.

By Mr. Payne: What I wanted to bring out was that he was not an oil man at the time and relied solely upon the representations that were made to him.

By the Court: Have you had any experience in refining and the production of the refineries?

A. Not at that time.

By Mr. Swacker: That is all.

(Witness dismissed)

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By Mr. Payne: Just a moment please, Mr. Powers, will you take the stand again, please?

(Whereupon, MR. POWERS was recalled for further examination. )

Q. Referring to Government's Exhibit No. 87 you stated yesterday that item 2546-B supplement 40 of Southwestern lines, tariff 26-T applied on unfinished naphtha if I understood you correctly?

A. That is what I gathered from the papers you showed me yesterday.

By the Court: Now, have you since refreshed your recollection.

By Mr. Swacker: I admit now, I see the tariff here it refers to a rate on gasoline southbound from Kiefer and elsewhere to Port Arthur, Texas.

By the Court: Very well.

By Mr. Payne: That is all.

(Witness excused)

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Whereupon, Mr. REILLY recalled for further cross examination.

*Cross Examination of Mr. Reilly by Mr. Swacker.*

Q. Mr. Reilly, with reference to the correspondence you were asked to identify yesterday, I will ask you if in addition to the correspondence you had some oral conferences with Mr. C. B. Ellis of the Gulf Refining Company relative to the subject-matter of that correspondence?

A. Well, I can hardly answer that directly. For three or four years—

By the Court: Now you will be confined to the conversation that the letters introduced refer to. Of course, here, ordinarily a statement is not admissible but when they go and introduce a part of it, when the letter refers to it then the jury are entitled to all that was said in that conversation.

Mr. Payne: Where a letter refers to a conversation?

The Court: Yes.

Q. Have you read that letter now so you understand the subject-matter of it?

A. I don't recall the letter. Mr. Ellis talked to me bearing on the subject-matter of this letter.

Q. Well, was that letter a part of the negotiation lasting over the period of time from 1914 to the end of 1916 that Mr. Ellis had with you?

Mr. Chambers: We object to that, on the ground of immateriality, not the best evidence, the letter speaks for itself.

Mr. Swacker: We are entitled to the whole of the negotiation if they put in a part of it.

The Court: If you can show one letter is a part of a series of letters that was continuous and relates to the same thing, I will let you introduce the whole correspondence.

Mr. Swacker: I think we are entitled to the conferences as well as the correspondence.

The Court: We will see whether the letter refers to the conferences. That will be a matter to come up, and I will pass on it.

Mr. Swacker: I will have to ask the government to produce the original of the letter from C. B. Ellis to Frank Reilly, dated May 16, 1915, or are you willing to concede that this copy may be used in lieu of the original, the lead pencil or pen notations of course, not being on the original.

Mr. Payne: Here is the original.

Mr. Swacker: Will you give this a mark for identification, Exhibit 97 of the defendant?

Q. I show you Defendant's Exhibit 97, identified as Exhibit 97, and ask you if you received this letter from Mr. Ellis about the time of its date?

A. Well, the letter does not indicate I personally received it, but it was taken from the Frisco files. I might indicate just how our force handled these matters. It does not indicate I personally received it.

Q. You mean by that, you did not personally open it up and handle that particular letter? A. Yes, sir.

Q. But that was received in your office and handled in the due course of business? A. Yes, sir.

Q. And under your direction? A. Yes, sir.

Q. I will ask you if that is a part of the negotiations I asked you about a few moments ago, extending over a period of time from 1914 to 1916, with respect to the rates from—between Port Arthur and Kiefer?

A. I imagine it is; it appears to be a part of the negotiations.

Q. Is it not a fact, it is a part of those negotiations?

A. Yes, sir.

Q. Now, there were also conversations in relation to it, oral conferences? A. Yes, sir.

By Mr. Swacker: I would like to offer that in evidence.

By the Court: Does that letter refer to any oral conference?

By Mr. Swacker: It refers to a telegram.

By the Court: They are entitled to have the telegram.

By Mr. Swacker: They have the telegram.

By Mr. Payne: Which one.

By Mr. Swacker: The one referred to in that. In May, 1916.

By Mr. Chambers: The other is to reduce the price of gasoline from 39<sup>tx</sup> cents to 33. This is for the establishment of another rate on another article.

By the Court: This is May 16, 1916—had the unrefined naphtha rate been established then?

By Mr. Swacker: Not to Port Arthur.

By Mr. Chambers: That is the commencement of the negotiations, for the unrefined naphtha rate. The other refers to the reduction of the gasoline rate.

By the Court: That is alright, I think this is.

Q. I show you another paper marked Exhibit 98 for identification and ask if that is the telegram referred to in Exhibit No. 97?

By the Court: Now, when was the unrefined naphtha rate made.

By Mr. Swacker: It was published as effective December 2, 1916.

By the Court: Now this is subsequent?

By Mr. Swacker: This is a request for the publication of it. This is May, 1916.

By the Court: Well, this is after it had already been made.

By Mr. Swacker: Made to other points but not to Port Arthur.

By the Court: The rate had been made by the Interstate Commerce Commission?

By Mr. Swacker: If the court please that cannot be answered exactly accurately. The Interstate Commerce Commission had initiated a rate in 1912, on unrefined naphtha, running from Muskogee to Coffeyville, which had nothing to do with this immediate proposition. Thereafter the carriers had, of their own initiative, published and filed a rate on this product from Oklahoma producing points to Baton Rouge, Louisiana. This letter calls attention to those rates and asks for the rate to Port Arthur.

Q. Is that correct, Mr. Reilly? A. Yes, sir.

By Mr. Payne: May it please the court, we don't mind going into this except it will open up a field which you will hardly ever get through with. Now we could show, we have witnesses here showing that what was shipped from Muskogee to Coffeyville and what was shipped from Oklahoma to Baton Rouge was a very different commodity from that shipped from Kiefer to Port Arthur and the opinion of the Interstate Commerce Commission reported in 23 I. C. C. would clearly show the distinction.

By the Court: I will permit you to introduce the

opinion of the Interstate Commerce Commission when these rates were put in. He is dealing with a carrier to get that in. They become conspirators to violate the law. This might be a two-edged sword. I will permit you to show that if the Interstate Commerce Commission when they initiated the rate from Muskogee to Coffeyville that their published opinion showed what they meant, I will permit you to show that.

Mr. Payne: The Baton Rouge rate, your honor, is not referred to in any decision by the Commerce Commission.

The Court: You opened this up by introducing this Baton Rouge.

Mr. Payne: I did not introduce the last one.

The Court: You introduced the first one.

Mr. Payne: We have no objection to the last letter, but we contend that there were representations that the commodity that was being shipped from Kiefer to Port Arthur was the same commodity as was moving between these other points but the fact was that we can show they were entirely different.

The Court: Get your witnesses here. That representation—where is that representation?

Mr. Payne: It is in that letter.

The Court: In this letter, let me see that.

Mr. Payne: It is not in there in black and white, but it is in there just the same.

Mr. Swacker: I desire to except to the statements of counsel for the government, in the presence of the jury, being argumentative, concerning the construction—

The Court: He is addressing the court.

Mr. Payne: I ask for an exception to the statement of counsel for the government.

The Court: You both stop right here. It says the—it says on the same letter or basis that this product is published in item 32½ what does that mean?

Mr. Swacker: That refers to the tariff—

Q. That, Mr. Reilly, is in reference to the tariff naming rate on unrefined naphtha from Oklahoma points to Baton Rouge, Louisiana, is it not?

A. I think that is what it refers to.

The Court: And Leland 26, item 35, and so on. Now, what others?

Mr. Swacker: One is from Muskogee to Coffeyville, and the other from Oklahoma points to Baton Rouge, is that not the fact?

A. Well, I would not like to testify without the tariffs, but I think it refers back to the publication from Oklahoma to Baton Rouge, and this letter was a request to publish the same commodity from stations on the Frisco to Port Arthur.

The Court: Now, if those two items referred to that, he says on same relative basis as this product, published in item so and so. Well, I will permit you to prove that that item on which this product was shipped was not the product.

Mr. Payne: All right, your honor. Be prepared to-- we are prepared to prove that.

Q. Mr. Powers, did you know the precise character of the products moving on the Baton Rouge rates, other than it was a product properly denominated unrefined naphtha?

The Court: Now, do you know? Did you know or go on the representations of the statements made there, or did you know of your own personal knowledge?

A. We followed the statements of the tariff preceding us from the other Oklahoma producing points. Reproduced what was ahead of our line.

The Court: You took the statement what they wanted to put on was the same product these items covered?

A. We did not necessarily take this statement. We were requested to put in a rate on crude naphtha or unrefined naphtha or unfinished naphtha, I do not recall which. We put it in on the regular basis.

The Court: Without any investigation of what it was?

A. Well, your honor, that is impossible. We cannot go out into the field. We don't know what is being shipped. We are hundreds of miles removed from the shipping point.

Mr. Swacker: I would like to offer those two papers in evidence, Exhibits 97 and 98. Now, I have offered those letters for the purpose of explaining the letters already offered in evidence by the government, and as being a part of that.

Mr. Diggs: And not for the purpose of undertaking to show the nature of the product.

The Court: That can go in for all purposes. And I will permit the government to prove, if they can, that the product shipped from Kiefer to Port Arthur was not the



same product covered by these other rates when they were put in. Because this man was traffic manager, he was presumed to know those rates and what they cover.

Q. Mr. Reilly, did your knowledge and conception of the term unrefined naphtha, extend to the point of knowing whether or not there was embraced within that term, naphtha produced either by casinghead compression plants or by a topping plant?

A. I don't think we could or would take into consideration as to how it was produced.

Q. The different methods of production?

A. The different methods of production.

Q. Made no difference to you? A. No, sir.

Q. It was merely a question of was the product unrefined naphtha? A. Yes, sir.

Q. And what was the main question was—the question whether it was finished or unfinished or what?

The Court: I don't think that is competent.

Mr. Swacker: Bearing on the question of the representation.

The Court: Well, the representations speak for themselves. It is in writing. The representations speak for themselves.

Mr. Diggs: We offer it, if the court please, for the purpose of explaining the meaning that the terms used in the letters already introduced by the Government carried to the mind of this witness.

The Court: Well, it is not what he understood. That might be if the Frisco was on trial on a criminal offense; they might show their intent, but they are not on trial here now.

Mr. Diggs: Give us an exception.

By the Court: I don't see any ambiguity about that. It says on the basis of the same commodity.

By Mr. Swacker: We don't contend there is any ambiguity, but it simply goes to the question of the manner of the production of the product without any bearing on the subject at all.

By the Court: He has testified in answer to the question, the question the court put. When you *ased* him to state what it was he illustrated when they put it in as brick that they would not be supposed to ship stone.

By Mr. Swacker: Very well, that is all.

By Mr. Payne: Will you waive the original of this decision. Mark this Government's Exhibit 99.

By Mr. Swacker: Yes, sir.

By Mr. Swacker: If your honor please, I would like to ask the witness one more question.

By the Court: Alright.

*Further Cross Examination by Mr. Swacker.*

Q. Did the degree of the finishing or refinement enter into the question of what might be shipped on that description?

By Mr. Payne: I object, the tariff speaks for itself.

By the Court: The letter speaks for itself too.

By Mr. Swacker: I except.

By Mr. Payne: I offer in evidence copy of the report of the Interstate Commerce Commission in the National Refining Company versus the Missouri, Kansas & Texas Railway Company, report 23, I. C. C., page 527 which describes—

By the Court: Show it to the other side.

By Mr. Swacker: We admit it.

By Mr. Payne: Which describes on page three the nature of the commodity shipped from Muskogee to Coffeyville.

By the Court: (Reading) "The product that was shipped seems to have no commercial designation or trade name; but complainant refers to it as a crude product, one shipper describes it in the bill of lading a crude benzine; the carriers classed it as refined oil. The evidence shows that the crude oil had undergone a skimming process, and that this commodity was one of the two resulting products. The Muskogee crude, as it comes from the well, has too low a fire test to be salable as fuel oil; by the skimming process the lighter ends of the oil are extracted, and the heavier residue become marketable as fuel oil."

"This skimming process is accomplished by distillation carried just far enough to separate the lighter from the heavier oil, the former amounting to about one-fourth part of the oil. The extracted product, though not separated in accordance with any specifications, may, therefore, properly be roughly described as a light end distillant—

By Mr. Swacker: Distillate.

By the Court: Distillate "and that designation will

be used in this report. It was this product that was shipped, and complainant's testimony was to the effect that it had no commercial value except for refining purposes; that at complainant's refinery it was kept separate from the crude oils and refined into gasoline, naphtha, turpentine substitute, and a residuum sold as fuel oil.

Mr. Swacker: Now, I would like, also, to just direct your honor's attention to the statement at the end, directing carriers to ascertain and apply a proper name to cover the product in publishing the rate.

Mr. Payne: We admit, your honor, on that commodity the railroads did publish a rate on unfinished naphtha which was two cents higher than the rate on crude oil between those points.

Mr. Swacker: Now, may I ask, in view of that admission—may I ask Mr. Reilly if the rate which was finally published from Kiefer and Oklahoma points to Port Arthur, was constructed upon the basis of the differential ordered by the Interstate Commerce Commission in that Coffeyville decision, except that owing to the Texas state distillate rate and the Baton Rouge rate it was necessary to exceed the differential ordered by the Commission in that case?

Mr. Payne: I object to that, because that directly relates to the reasonableness of the rate.

The Court: I will sustain the objection to that, but I will permit him to say that in framing these rates, they had that letter and this opinion in mind.

Q. Very well. Will you say that is a fact, Mr. Reilly?

A. In establishing the rate from Kiefer, we had in mind the tariff rate that had been published from Oklahoma and Kansas to Baton Rouge.

The Court: And the decision of the Interstate Commerce Commission?

A. That was carried by the lines originally in publishing the rate to Baton Rouge. If I may be permitted to explain the rate-making basis—

The Court: Now, I will just permit you to state that you had those before you when you did that.

Q. Well, in the establishment of the Baton Rouge rate, you had the Commission decision as a basis, is that correct?

A. Yes, sir.

Q. That was the case, also, as to the Coffeyville rate, established some years prior?

A. I don't recall, the Frisco not being a line between Muskogee and Coffeyville, whether we established that rate.

Q. But in the establishment of the Baton Rouge rate, you had the order as the basis for the establishment of the Baton Rouge rate?

A. The guiding point of the railroads in publishing the rate on naphtha.

The Court: After rates were made, then it was up to the shippers to ship in accordance with them?

A. Yes.

*Redirect Examination by Mr. Payne.*

Q. Mr. Reilly, as a general course of business in the railroad world, is it a fact that the shipper asks for a rate on the particular commodities between particular points, and he names the commodity, is that correct? A. Yes, sir.

Q. For example, a man would come to you, would he, and say I want a rate on brick from Chicago to St. Louis, Do you, as a general rule, make any investigation——

The Court: He has testified that he did not. That is in the record. Didn't you testify to that, Mr. Reilly, that you didn't make the investigation?

A. Not any detailed investigation. Our general knowledge we might know of the necessity for a rate.

Mr. Payne: That is all.

Mr. Diggs: He testified he didn't go on the ground and make investigation.

The Court: He said that if they asked for a rate on brick, he wouldn't assume they would ship stone.

The Witness: Yes, sir.

The Court: And if a refiner asks you to make a rate, you have a general knowledge as to whether they have a refinery, their capacity, and you assume that they will ship what they are asking for?

A. Yes, sir.

The Court: You don't go into details in investigating what they turn out?

Mr. Payne: That is all.

*Recross Examination by Mr. Swacker.*

Q. That is, you investigate what the parties represent to you they want to ship at the time application is made for a rate, but you mean to say that you do not, after the establish-

ment of the rate, go and make a detailed inspection to see whether they shipped that commodity.

The Court: He didn't testify he went and investigated the commodity. They come to him and ask you for rates—they come to you and ask you for a rate on unrefined naphtha. You know they have a plant, you assume they have got what they say. You don't investigate to see whether they have the commodity?

A. No, sir, we take the shipper's statement.

Mr. Swacker: That is all.

Mr. Payne: That is all.

Mr. Swacker: We would like leave later to offer to the court that we don't think it is proper testimony relative to that decision.

(Witness dismissed.)

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The Court: How many more witnesses have you?

Mr. Payne: It will take all day and part of Monday.

The Court: All right, we will hold court all day.

And thereupon GEORGE L. PRITCHARD, a witness on behalf of the Government, having been first duly sworn, according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your name. A. George L. Pritchard.

Q. Where do you live? A. Port Arthur, Texas.

Q. What is your employment?

A. Superintendent of the Gulf Refining Company.

Q. Superintendent, or general superintendent?

A. General superintendent.

Q. How long have you been employed by the Gulf Refining Company? A. Sixteen years.

Q. How long have you been general superintendent?

A. About seven years, I could not state exactly.

Q. As general superintendent, did you have general charge of the operations of the refinery? A. Yes, sir.

Q. Do you have charge of the laboratory? A. Yes, sir.

Q. Have you what is known as a continuous treating plant in the Port Arthur Refinery? A. Yes, sir.

Q. Can you describe just how that treating plant is operated, and what results it accomplishes?

A. Well, in the continuous treating plant, we treat naphtha distilled with caustic soda solution, to remove the still odor from the naphtha.

Q. Can you describe that more in detail—you have a battery don't you?

A. Well, we have what we call three towers, and we pump the gasoline in through this caustic soda solution, and then through water to wash it, and then the water settles out and it goes out in the tank.

Q. Is that the only treating process that you give in refining oil? I mean, is that the only treatment that is given to refined oil? A. Oh, no, we treat different ways.

Q. Well, is that the only agitator treatment?

A. No, we treat our illuminating oil in lead lime agitator.

Q. I am not interested in that. Is that a refined oil or a heavy oil? A. It is a refined oil.

Q. How was that?

A. We treat it with acid in a lead lime agitator.

Q. Is there any difference in principle between a continuous treating plant and what is known as an agitator?

A. Yes, sir.

Q. What is the difference?

A. You will have to state that more clearly. I do not understand what you mean.

Q. What I mean is, is there any difference in the result accomplished? A. Yes, sir.

Q. What is that difference?

A. We can refine in an agitator to a higher purity.

Q. Under what circumstances do you put your oil through the treating plant, and under what circumstances do you treat them in the agitator?

A. Well, that will vary. Some times we do not have enough capacity in the continuous treating plant and we put them in the agitator instead of putting them through the continuous treating plant.

Q. What is the fundamental difference in principle between your continuous treating plant and your agitator?

A. One you treat continuously and the other you see in the batch method. Take, for instance, two thousand barrels, that is continuous right straight through.

Q. You mean that in the continuous treating plant oil is going in all the time and going out all the time?

A. That is what continuous means in through and out.

Q. We are trying to explain what batching means, you mean you have to put in a batch?

A. Charge up a batch, a certain number of barrels and apply the chemicals and treat it.

Q. And take that batch out and put another in?

A. Yes.

Q. Now in the agitators what are the different ways of treating the oils?

A. They will vary according to the purity you want. There are a number of different methods.

Q. What is the way you treat your gasoline, in agitators? Yes I am referring to your gasoline produced in the refinery by the distillation of crude oils?

A. Sometimes that is treated in the agitator with acid, all together what it is used for.

Q. All according for what it is to be used for?

A. Yes, sir.

Q. Isn't gasoline always used for the same thing?

A. No. There are different uses for gasoline; gasoline for airoplanes, gasoline for *fighthing* plants, and gasoline used for motor cars and some gasoline used for cleaning purposes.

Q. Gasoline stoves? A. And gasoline stoves.

Q. Those gasolines are treated in different degrees is that correct?

A. In various degrees according to what the market demands.

Q. Now suppose you had a gasoline that had only partially been treated would it still be gasoline?

A. Well according to what it was being used for.

Q. Can you state off hand what tank 838 was generally used for in the last two or three or four years?

A. No, sir, I would not want to trust my memory. A refinery is a big place and I cannot undertake to remember every operation down there.

Q. Do you remember what tank 805 is generally used for?

A. That would be the same as 838, that is all done under the supervision of the foreman in that department.

Q. Did you get typewritten copies—do you get—did you receive typewritten copies of the daily test sheets made in the laboratory? A. Yes, sir, we do.

Q. For what purpose are those sheets sent to you?

A. To see that everything is up to specifications that goes out of the refinery, every shipment, they come into the office and it is turned over to the clerk and he goes over them and then they are turned into my office and to see if there is anything out of order.

Q. From those sheets do you direct with reference to the various operations in the plant? A. Yes, sir.

Q. Is a copy of that statement sent to the Pittsburgh office? A. Yes, sir.

Q. Does the Gulf Refining Company operate tank steamers from Port Arthur? A. Yes, sir.



Q. Do those tank steamers operate lines from Port Arthur to eastern distribution stations?

A. Yes, sir, I believe so.

Q. Where are your eastern distribution stations located to which these boats go?

A. Beverly, Massachusetts, and Bayonne, New Jersey.

Q. Bayonne? A. Yes, sir, and on the Gulf coast.

Q. One to New York? A. Bayonne.

Q. One in Philadelphia? A. Yes, sir.

Q. One to Tampa? A. Yes, sir.

Q. Havana?

A. I will not say that about that, I am not an authority on that. That is out of my line.

Q. You just know that in a general way? A. Yes, sir.

Q. Are most of the products of the Port Arthur Refinery shipped out in the boats?

A. Yes, sir, the largest percentage are shipped in boats.

By the Court: Let the records show that these exhibits introduced on the cross examination of Mr. Powers was read. That makes the record complete. Now you all don't seem to be moving up with the idea of what I said. Now I am not going to be here on the 26th. I am going to Ardmore and hear arguments, it will take two days. One of the lawyers on that case will go on the Supreme Court May 1st, and that will preclude the continuance of that case. In addition to that there is a business matter I set there for that date so if you don't get a move on you will be waiting here while I am travelling around for a few days. Now when I say anything you had just as well proceed on the theory that I mean it. I cannot make you get through but I can recess this court and if necessary have this jury kept together in charge of a bailiff and keep them here and keep you here too.

By Mr. Payne: We are very anxious to get away, your honor.

Q. I show you Government's Exhibits 100, 101 and 102 and will ask you if they are original records of the Gulf Refining Company?

By the Court: I don't know but what that would be a good thing for the jury, the high cost of living and everything their expenses would be paid by the Government, I don't know but what that would be a good thing for them.

By Mr. Payne: I rather anticipate we will get through by the end of the week.

By the Court: Yes, but you anticipate they are not going to draw it out like you are?

A. These are the records kept by the testers in the laboratories.

By Mr. Payne: I offer these three books in evidence.

By Mr. Swacker: I object on the grounds of irrelevancy and immateriality.

By the Court: You show they are part of the records of the Gulf Refining Company?

By Mr. Payne: And made in the regular course of business.

By Mr. Diggs: We will admit they are part of the records.

By Mr. Swacker: We concede they are part of the records of the Gulf Refining Company?

By the Court: Between what dates?

By Mr. Diggs: Between the dates shown.

By the Court: What dates do they show? Look at the first and last page of the book.

By Mr. Swacker: We will take their statement as to the dates. The book I am holding marked Exhibit 101 appears to run from August 13, 1917, to January 31, 1918. The book marked 101 appears to run from September 12, 1917, to January 27, 1917.

Q. Will you state the period that book covers?

A. Government's Exhibit 100, March 31, 1917, to September 10, 1917.

By Mr. Payne: Now is the objection overruled?

By the Court: They are admitted in evidence subject to their objection of irrelevancy and immateriality.

By Mr. Swacker: Exception.

Q. Mr. Pritchett, I show you Government's Exhibit 103 and ask if that is an original record of the Gulf Refining Company?

By the Court: Now show these records to the other side.

By Mr. Swacker: We will concede—

By the Court: Why take up the time?

By Mr. Swacker: We admit they are records, if they will give the dates we will admit the dates.

By Mr. Payne: February 3, 1918, to September 30, 1919, I offer that in evidence.

By the Court: It may be admitted with over the same objection on the ground of relevancy and immateriality.

By the Court: In the early part where the words relevancy and competency was used from the phraseology in which the word competency is used here it means—

By Mr. Diggs: It is never used here in the sense of this not being the best evidence.

By the Court: That is understood here that the word competency as it is used, is not meant that it is not the best evidence because in some jurisdictions the word incompetent don't raise those questions and I noticed they were used loosely in here.

By Mr. Swacker: We don't dispute the authenticity of the records.

By the Court: But I notice the words competent is used here very loosely and I thought I would mention that to have the record straight.

Q. I show you Government's Exhibit 66 that was introduced in evidence yesterday and ask you to look at the item on top of page 72 first line, it is a fact that this book shows that that car or cars referred to here is shipped out as gasoline on this order number shown here—according to the book?

A. I don't see the book dailys but I imagine that is the way I would interpret it.

Q. Mr. Pritchard, do you—is it a practice in the refinery to have simultaneous pumping from two tanks?

The Court: You mean pumping from two tanks at the same time?

A. Yes, sir, we pump from two pumps at the same time on our tank steamers.

Q. And is that also true of tank cars?

A. I suppose so sometimes, yes, sir.

Q. Now, refer to the test record for that day, and state whether the record shows that the gasoline in the car referred to there in the first item was pumped simultaneous from tank 805 and tank 838?

A. I could not do that unless you had the pump book; it shows that. This is just a laboratory record, and I don't know whether this is correct or not.

The Court: What does that show?

A. It shows 805 and 838, but the pumping record would be the only authentic record of that.

Q. Refer to tank 838 and state what was in that tank that day. A. Gasoline.

Q. And tank 805?

A. 805 is not there by itself. It is in combination with 805 and 838 on that date.

Q. Is that the same date? A. That is the same date.

Mr. Swacker: Do you have anything to do with those books?

A. I very seldom see them.

Mr. Swacker: Do you understand how those books are kept, the entries made in them?

A. They are kept by the inspectors in the laboratory. My report goes in, in typewritten form.

Mr. Swacker: You operate from your report?

A. I operate from my report, yes, sir.

Q. Refer to page 68 and state if tank 805 did not have gasoline in it, state what the book shows was in that tank on that date.

A. It shows gasoline.

The Court: He is not swearing independent of the book.

Mr. Swacker: Well, does the book show that the tank had gasoline, or is simply the word "gasoline" written opposite tank 805?

A. Gasoline dittoed opposite tank number 805.

Mr. Swacker: Were these books kept under your direction, or under the direction of the chief chemist, or whom?

Mr. Payne: I am examining this witness.

Q. As a matter of plain common sense, Mr. Pritchard, wouldn't you, wouldn't you infer from this record that gasoline was in that tank on that date?

A. That would be according to the specifications.

Q. I am asking you what this book states.

A. I would have to know the quality.

Q. I am asking you to state what this book shows.

A. That indicates gasoline.

Mr. Diggs: If the court please, we ask to have excluded the witness' answer what the book indicates.

The Court: Yes, just what the books show. Now, what is on the book, if the book shows tank 835, but that has been gone over.

Mr. Payne: We want to bring out another point.

The Court: Well, point it out. That is already in, that they entered them up and run the tanks 805 and 838, that was described yesterday and the day before.

Mr. Payne: I haven't quite made my point clear.

The Court: You can assume that is proof, and travel along the line. That book was introduced yesterday, you referred to it, and that was all referred to, according to my recollection.

Mr. Payne: This particular matter, your honor, was not.

The Court: Well, go and ask him the particular matter.

Mr. Payne: All right.

Q. I will ask you whether it was a practice in the refinery to mix gasoline with painters' naphtha by pumping from the painters' naphtha tank and the gasoline tank at the same time into boats and into cars, the boats and cars being shipped out as gasoline?

A. We have done it, in accordance with specifications and special tanks.

Q. Haven't you done that frequently?

A. I would not say frequently?

By Mr. Payne: You can see——

By the Court: How many times?

A. Judge that would be a hard matter.

By the Court: How many times did you do it a week?

A. May not do it sometimes in a week, sometimes twice a week, and maybe sometimes three times a week.

Q. In loading the boats? A. Yes, sir.

Q. How many gallons would a boat——

A. 50042 gallon barrels.

By the Court: 50042?

A. That is the capacity of the boats.

Q. Sometimes you would do it two or three times a week?

A. If we find it necessary sometimes to expedite the loading of the boat, we would blend it just the same as we would do at the refinery.

By the Court: Take the naphtha from one tank and pump it into the boat and the painters' naphtha?

By Mr. Payne: Yes, sir.

By the Court: From another tank would you pump them in simultaneously?

A. Pumped them in together and have the laboratory inspect the blend according to our specifications controlling at the laboratory and they were always inspecting the shipping tanks.

By the Court: Did you put anything else in except the blend.

A. Yes, sir, that is all.

Q. And shipped it on the boat? To Bayonne and Philadelphia as gasoline?

A. Yes, sir, after it passed specifications.

Q. Shipped it as gasoline? A. Yes, sir.

Q. When you pumped simultaneously would there be a connection of the pipes to the two tanks? Or would both of the pipes run from the tank to the boat or would they join at some place in route?

A. Sometimes we are equipped different, we can run both pipes to the boat or run right *right* into the pump.

Q. I see you can run stuff from two tanks into the pump and that mixes it up and send it along?

A. Yes, sir, and you can take separate pumps and use separate lines.

By the Court: In making that kind of a blend in naphtha, painters' naphtha, did you use both ways?

A. Sometimes we did that.

By the Court: The reason I asks the question is to push things along.

By Mr. Diggs: We have no objection.

Q. Now isn't it a fact, Mr. Pritchard, that the cars that you received from Kiefer and other Oklahoma points from casinghead gasoline plant upon arrival at Port Arthur would be put into tank 805?

A. I would not say that, it may be put in the other tank, it is according to the conditions.

Q. What other tank?

A. 838, 857 and number of other tanks around there that could be utilized for it.

Q. Now lets take 805 as an example, suppose it does go into 805 now is it a fact that stuff is pumped from that tank to your boat simultaneously with the stuff with 838 on the same date, frequently that your Kiefer cars go into that tank?

A. I didn't get that?

By the Court: Let me read the question.

(Question read by the reporter.)

A. That would all be according to what the material was in the tank.

Q. Has not that occurred frequently?

A. I would not say positively, I do not know.

By the Court: What is your best judgment?

A. Perhaps it has, that is my best judgment.

By the Court: Now he says his best recollection is it has. Now you have got your records on those specific points before the jury. Is not that enough.

By Mr. Payne: I think so.

Q. Now isn't it also a fact that on the same day Kiefer gasoline would be dumped into tank 805 some stuff from tank 805 would be pumped to the boat and stuff from tank 838 containing painters' naphtha would be pumped to the boat simultaneously from those two tanks and on the same day painters' naphtha out of tank 838 would be shipped to Kiefer?

A. I would not want to make that statement.

By the Court: What is your best recollection.

A. I think it is.

Q. In other words isn't it a fact that the very same stuff—

By the Court: Now he has answered that, he says that according to his best recollection he thinks that is so but he is not positive about it. I don't think any man could be positive about a thing like that.

Mr. Payne: I was going to ask him about the general practice.

Mr. Swacker: Ask him about the facts.

The Court: You asked him if he knew anything like that. I would not believe him.

Mr. Payne: He is general superintendent.

The Court: I would not have much respect for his evidence if he had not said that is his best recollection.

Mr. Payne: I want to ask him if it is not a fact the same painters' naphtha is used for blending at Port Arthur with the stuff that comes from Kiefer after it is sent north down to Kiefer.

The Court: I will permit that. You asked him if the same naphtha known as painters' naphtha is not used for blending and for making gasoline shipments to points by steamers or otherwise as was shipped to Kiefer for blending purposes.

Mr. Swacker: May I ask that painters' naphtha be eliminated? Nobody here has defined it and everybody has a different notion.

The Court: If he knows, ask him the question, ask him that.

A. What is painter's naphtha?

The Court: Yes, sir.



Q. Heavy naphtha for the purpose of treating.

The Court: What is designated as painter's naphtha? What is it?

Q. What is known down there at the plant as painter's naphtha? A. It is about 54 gravity,—

Q. Just a minute. A. I don't understand.

The Court: The witness is all right. He understood you asked him what it meant. Go ahead. Repeat the question over to him.

Q. My question is, which we want you to answer, is whether you don't ship the same naphtha to Kiefer for blending with your gasoline as you blend it with the stuff from Kiefer, after it arrives at Port Arthur?

A. The same stuff, but always mixed with the refinery gasoline.

Q. It is the same stuff?

A. It is always mixed with refinery gasoline.

Q. You have tank 838, for example, and you ship stuff out of that tank to Kiefer, and, at the same time, when the stuff gets back from Kiefer, you blend it with more stuff from tank 838?

A. In addition to refinery gasoline.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. When you blend the three commodities that Mr. Payne has been asking about, that is the naphtha called painter's naphtha, which is the material that was shipped northbound to Kiefer and used to blend with casinghead, plus the blended casinghead that came down from Kiefer, you say in addition to that, you universally blend it with refinery gasoline?

A. Always with gasoline.

Q. That you invariably, whenever you do so blend, blend with refinery gasoline? A. Yes, sir.

Q. What would be the object in using this so called painters' naphtha to blend the blend which had arrived from Kiefer with refinery gasoline, what would be the purpose of doing that? A. In order to meet specifications.

Q. What would be the effect of doing it on a particular blend you would otherwise have blended—the ordinary practice is to blend the unrefined naphtha with refinery gasoline?

A. Yes, sir.

Q. And there is added the so-called painter's naphtha, also? A. Yes, sir; it varies.

Q. What is the object of such addition, what is the effect?

A. To make it meet specifications.

Q. That is the object. What is the effect? What does it do? How does it affect the blend otherwise if it was not done? Does it reduce the gravity or end point?

A. Reduces the gravity to a certain extent and if your overpoint is too low, it may perhaps raise that.

Q. How would it affect your end point, dry point?

A. If you mixed it to meet specifications, it would meet 428 dry.

Q. I mean, what does it do? Does it raise or lower the dry point. A. It raises the dry point.

Q. The addition of the so-called painter's naphtha, to a blend of otherwise unrefined naphtha and refinery gasoline, tends to raise the dry point, is that correct?

A. Yes, sir.

Q. And when it is done, the reason of doing it is in order to meet the specifications, is that correct? A. Yes, sir.

Q. How does it affect the recovery that will be shown by the distillation test? A. It helps the recovery considerably.

Q. What do you mean by helping the recovery considerably?

A. If specifications call for 95 per cent., what we call in a distillation of the painter's naphtha, you can help it.

Q. That is, you can raise the recovery to 95 or towards 95?

A. Yes, sir.

Q. What is commonly denominated naphtha fraction, explain that to the court? A. Naphtha fraction is done——

Q. Without regard to particular measure of gravity, or anything of that sort, what is it, as related to crude oil?

A. It is the portion containing the gasoline and naphtha and benzine.

Q. Is it of those so-called lighter hydro-carbons of crude oil which are lighter than the ones from which kerosene and heavier products are made? A. Yes, sir.

Q. Now, what is the first operation in the process of refining at that refinery, and if that varies from refineries generally, distinguish it.

A. Why, I think we run pretty close to most other refineries. The first operation we charge the crude oil into the still, and then you get your naphtha cut.

Q. Well, can you get the naphtha cut?

A. Distilled over to a point cut in making about 52——

Q. This so-called lighter hydro-carbons are naphtha fractions that are used ultimately to make gasoline, benzine and naphtha? A. Yes, sir.

Q. Are called first cut and distilled first and come over first? A. Yes, sir.

Q. And separate off from the balance of the crude oil?

A. Yes, sir.

Q. What happens to the naphtha fraction after it is thus first cut off?

A. General refining practice is to pump into the agitator and treat it.

Q. Pumped into the agitator and treat it? A. Yes, sir.

Q. The whole mass of naphtha fraction is taken and agitated? A. Yes, sir.

Q. What is the character of the treatment accorded there?

A. It is given a sulphuric acid treatment.

Q. Given a sulphuric acid treatment?

A. That is the practice, purified before distilled.

Q. What is the object of the sulphuric acid treatment?

A. To remove the impurities from the naphtha.

Q. Remove the impurities—you remove the impurities of the naphtha fraction? A. Yes, sir.

Q. What do you do with this mass next? Is it still all in one mass?

A. Yes, sir, it is generally—it is a general refining practice to keep it in one mass and then go to the steaming still.

Q. What is done with it? A. Steam still it.

Q. What do you mean by steam still it?

A. Distill it with steam and make it in to various cuts.

Q. What does that do?

A. Divides it into—divides it up, fractionates it into various units.

Q. Fractionates it into subdivisions of the general mass?

A. Yes, sir.

Q. Those subdivisions go into—all go into the commodity to produce the naphtha, benzine and gasoline?

A. Those are the terms.

Q. What are the terms naphtha, gasoline and benzine as you have used them?

A. Benzine is the heavy product; gasoline is the lighter fraction; and benzine the intermediate; and naphtha the heavy.

Q. Gasoline is one of the lighter subdivisions, it is the lightest? A. Yes, sir.

Q. The product called benzine is the intermediate subdivision? A. Yes, sir.

Q. And the product called naphtha is a lower subdivision? A. That is what we term it down there.

Q. And those are the names, the names as you would apply them and they are applied to the finished product?

A. Yes, sir.

Q. They are the names of the finished products of this process of refining that you are now describing?

A. The gasoline and naphtha.

Q. And benzine?

A. And benzine. They use those terms, yes, sir.

Q. Naphtha is also a name that applies to all of them as a body, is that true? A. Yes, sir.

Q. And is that true, both as to in their state while in the process of refining, and after they are refined, that naphtha is a name applied to the whole family?

A. It varies; some people call it naphtha and some people call it other things.

Q. Well, what else do they call it?

A. Some people call it gasoline, some call it naphtha, and some people call it benzine.

Q. These three finished products some people call one of these particular names; gasoline, naphtha and benzine, and others call the group of them as finished product, naphtha?

A. Yes, sir.

Q. And aside from that, while in the process of refining, they are called naphtha, are they not? A. Yes, sir.

Q. Now, after this steam stilling which has separated the three subdivisions of the naphtha fraction into the material that is to make gasoline, benzine and naphtha, what is the next step that is taken with the product, that is, to become gasoline? A. It is finished by treating.

Q. It is finished in a sense of distillation?

A. No, we are through distillation.

Q. What is the next step?

A. It is given a chemical treatment.

Q. What kind of a chemical treatment is that?

A. That varies; it is according to what is required.

Q. Then what is next done?

A. It is pumped out into the tank.

Q. Now, then, is there occasion to blend it in order to meet specifications to make it a completed product?

A. Sometimes it does not meet specifications and it is necessary to blend it.

Q. Now, then, is there any particular manner of refining utilized or done with respect to the refinery gasoline with a view to making it able to accomodate as a blend the unrefined naphtha which you get from Oklahoma?

A. Yes, sir, we make a better quality so it will blend, better meet specifications.

Q. That is, you exceed specifications on the refinery product in order to enable it to accomodate by blending the Oklahoma product? A. We have to.

Q. Well, is that process of blending a common incident of refining in refineries generally?

A. It is considered one of the process- of refining. It is always done by an experienced man, and you can't do it without you have——

The Court: You mean that blending the two products is refining?

A. Yes, I figure it is, Judge.

Q. That is, the case, for instance, do you know anything about refining sugar? A. Not to talk about.

Q. You would rather stay on petroleum?

A. I would rather stay home, yes.

Q. You mean, when you go and blend casinghead with naphtha, that would be refining?

A. If it doesn't meet specifications.

The Court: I mean, would that be refining?

A. That would be a process.

Q. A process of refining, you mean. A. Yes.

The Court: Here is the point in my mind. It says now unrefined. Now, unrefined, that is used in the sense that it is not a finished product. If it has been refined at all, can you say it is not refined.

Mr. Swacker: A product is unrefined only until it is refined, if there is any refining done in connection with it.

The Court: He says the blending these two products here at Kiefer, that that is a process of refining.

Mr. Swacker: Yes, partially.

The Court: How can you say it is unrefined if it has gone through the process of refining?

Mr. Swacker: We say anything is unrefined until it is refined, refining is the producing finished operation.

The Court: Unrefined means there in the sense that it is not a finished product, and was that the intention?

Mr. Swacker: Absolutely. That is exactly what these letters show; that it was not finished.

Q. Mr. Pritchard, is any of the product refined at the Port Arthur Refinery a refined product until it is finished?

A. No, we don't consider it so.

By the Court: Now you mean finished is when it is put in a state to meet the specifications of the purchaser?

A. Yes, sir.

By the Court: And then anything might be gasoline as you term it gasoline, for one purchaser and not gasoline for another purchaser according to the specifications requested?

A. Yes, sir.

By the Court: This unrefined naphtha that comes to Port Arthur is that ever treated throughout the period of time it has been coming there, been shipped in that state without further blending with the refined process?

A. No, sir, we have never shipped it out in the state it was received there and if we did I think we would be criminally negligent because it is not in a fit shape to be put on the market.

Q. Why, because of its danger?

A. Too volatile. It's dangerous.

Q. Does that blend that blending that is done in Kiefer eliminate the necessity of the other refining process?

A. No, sir, we have to refine it when we get it down there.

Q. It is necessary to refine it further by further blending when it is shipped down there? A. Yes, sir.

Q. What is the purpose of the degree of blending that is done at Kiefer?

A. Well, I am not familiar with the process up there but I understand it is done to meet the laws of vapor tension.

Q. Aside from any laws regarding the vapor tension what other function does it perform with respect to the casinghead?

A. I don't understand.

Q. What function does it perform with respect to the casinghead?

A. I am not familiar with that part of the branch of the plant.

Q. Does it have the effect of—

By the Court: He stated he did not know.

By Mr. Swacker: Very well, I will leave that.

Q. Can this heavy naphtha be used as a holder or container or conveyance of casinghead gasoline? A. Yes, sir.

Q. How does it operate in that way?

A. It takes up this material and makes it safer to handle.

Q. Well aside from making it safer to handle what does it do with respect to containing it or holding it?

A. It absorbs it.

Q. And keeps it in liquid solution? A. Yes, sir.

Q. That is prevent it going back to the state of gas again?

A. Yes, sir.

Q. Now then in the course of refining what we may designate straight run gasoline, that is designation used around a refinery is it not?

A. Yes, sir, straight run refinery gasoline.

Q. And what does apply to?

A. Gasoline made from the crude run of the still.

Q. Now in that process does there sometimes arise, a vapor which fails to condense? A. Yes, sir.

Q. What do you call that vapor? A. Gas.

Q. Still gas? A. Still gas, yes, sir.

Q. In fact does that arise all the time in the course of this distillation?

A. Well it is according to what you are distilling.

Q. When you are distilling naphtha fractions which are a good part of the body of a crude, a light crude, well what are the circumstances in which it arises?

A. Well when the still first goes over it forms gas and that is what we call still gas.

Q. And that does not condense in the ordinary process?

A. No.

Q. Well now what do you do with that? A. Compress it.

Q. What does that material while in a gaseous state resemble in connection with unrefined naphtha, is it the same thing as casinghead gas before casinghead gas is condensed?

A. I would not want to state.

Q. It is extremely volatile hydro carbon of the naphtha?

A. Yes, sir.

Q. You say you compress that and that compression produces what?

A. A high gravity gasoline, a very high gravity.

Q. What did you call it?

A. We call it compression gasoline.

Q. That is not a finished product at that time, is it?

A. No, sir.

Q. Is that product substantially the same product as the unblended casinghead or unrefined naphtha which you received from Oklahoma distinguished as these lighter hydro carbons the same as the unblended unrefined naphtha that you receive from Oklahoma? A. Unblended?

Q. Yes? A. Yes, sir.

Q. And it is of about the same over and dry point?

A. Practically the same.

Q. And distillations will prove about the same?

A. Practically the same.

Q. Now what do you do with that material?

A. That is blended with refinery straight run gasoline.

Q. Is it a refined product until that is done?

A. No, we don't consider it so.

Q. Well is it ever shipped as gasoline? A. Never.

Q. Is it ever sold as gasoline? A. As gasoline?

Q. Yes, to be used as gasoline? A. No.

Q. Can it be used as gasoline? A. No- that I know of.



Q. Why, what would be the trouble about it not being usable as gasoline? A. Too dangerous.

Q. What other reasons?

A. It wouldn't meet specifications.

Q. Regardless of specifications would it be usable; has it any qualities about it that make it unusable for gasoline purposes, for instances in a motor car?

A. I wouldn't use it in a motor car, not that light stuff.

Q. Could it be used generally for gasoline purposes without further treating it, distilled gasoline? A. The light stuff?

Q. Yes, sir? A. No, sir, would have to be blended.

Q. Would have to be blended before it could be used?

A. Yes, sir.

Q. Now you have frequently made and do you frequently make and have made distillation tests of shipments of unrefined naphtha coming from Oklahoma, do you not?

A. Yes, sir.

By Mr. Swacker: Mark these defendant's exhibits 104, 105 and 106.

Q. I show you three papers marked defendant's exhibit-104, 105 and 106 and ask you if those are distillation tests performed by you on unrefined naphtha, unblended, unrefined naphtha, blended crude, unrefined naphtha, painter's naphtha, distillate, cracked naphtha, benzol, *stright* run gasoline, and blended gasoline, the first two items being the product received from *Olahoma*?

A. Yes, sir, that is correct.

Q. That shows the distillation tests? A. Yes, sir.

Q. Performed on that product? A. Yes, sir.

Q. And shows the results on that? A. Yes, sir.

Q. That is characteristic of that product, these distillation tests are characteristic of that product?

A. Yes, sir, they cover and qualify on it.

Q. And the item straight run gasoline on those tests is the material you have spoken of that is produced in excess of specifications in order to accomodate by blending the Oklahoma product, is that correct? A. Yes, sir.

Q. These were performed on the characteristic stuff that you get from Oklahoma? A. Yes.

Q. Have you ever known of any recoveries on that material to show on distillation as high as the lowest specifications that you know of? A. No. It is always greater.

Q. The lowest specifications of gasoline that you know of requires a greater recovery than any of this stuff I have shown, is that correct? A. Yes, sir.

Mr. Swacker: I would like to offer those in evidence.

The Court: Have they been identified?

Mr. Swacker: Yes, he has identified them as having been distillation tests of characteristic material.

The Court: Are those from the files of the Company?

Mr. Swacker: These are papers that he had made up.

Mr. Payne: I must object to these unless it is shown that they relate to some of the cars in the indictment.

The Court: Yes, I don't think they are competent unless it relates to the cars.

Q. These were performed some time subsequent to May, 1919? A. No, these were later than that.

Q. That is what I say, some time later than that?

A. Yes, sir.

Q. They were performed later than October, 1919?

A. Little later.

Q. October, 1919? A. Yes.

The Court: He can testify as an expert what he thinks about things, and what investigation he made, but unless these papers are a part of the records of that institution—

Mr. Swacker: Here is all I want to do by this paper, and it will just take time to do it, I want him to testify to the characteristics of the unrefined naphtha received at Port Arthur between December 2, 1916 and March, 1919, the dates embraced in the indictment by those terms.

The Court: He can testify—

Mr. Swacker: He just simply testified these were the characteristics of the material.

The Court: Well, if they object to it, I will have to exclude it, because it is not competent.

Mr. Swacker: I will just have him testify as to the characteristics.

Q. Mr. Pritchard, what is the average gravity of the unblended, unrefined naphtha received during the period December 2, 1916 to March, 1919?

A. Unblended, unrefined naphtha?

Q. Yes? A. That runs about 78 to 80.

Q. From Kiefer, Jenks and Drumright?

A. Let's see. I have got some records here.

Q. Well, from Jenks?

A. From Jenks, about 77 or 78 gravity.

Q. That is unblended, unrefined naphtha?

A. Yes, sir, and we have had some as high as 80.

Q. Now, what is the average color test on it?

A. It will average about 24 to 25.

Q. What is the average vapor tension on it when it arrives at Port Arthur? A. That is from where?

Q. From Jenks: We are dealing altogether with Jenks now. A. About eight.

Q. About eight? A. Yes, sir.

Q. What is the per cent of evaporation in a fifty cubic centimeter open dish four inches in diameter at six hours at atmospheric temperature? A. Average about 65.

Q. About 65? A. Yes, sir.

Q. Were you speaking of the fifty cubic centimeter?

The Court: No, he can not,—

Mr. Swacker: All right.

A. That is from Jenks, you say?

Q. Yes, sir?

A. It will average 65 per cent of evaporation.

Q. In what time? A. Six hours.

Q. In what kind of a dish?

A. 50 C. D. open dish, fifty cubic centimeters open dish.

Q. What temperature? A. Atmospheric temperature.

Q. What is the average over point?

A. It will average about 82 and 88 to 89 and 90.

Q. What will there be over the 221 degrees Fahrenheit?

A. It will vary from 70 to 83 per cent.

Mr. Payne: I object, your honor. The question here is whether the particular cars in the indictment were gasoline. He is stating the average over point and the average gravity.

The Court: He is proving the character of the material that they shipped and how it was blended. I suppose they are laying the predicate for expert evidence.

Mr. Payne: I have just one point I have in mind, your honor. There has been testimony here that by adding a little additional naphtha to the gasoline, compressed at the casing head plant, you lower the gravity down to the point called for by the specifications of the purchaser. Now, it may be that perhaps there were cars that were shipped here between these points that had such gravity and the over point and may be others that had higher gravity and lower over points, and when we average them all up I can not see how we can arrive at an intelligent result with respect to the particular cars in the indictment.

The Court: Now, how are you going to prove, you

haven't offered any proof of the gravity in those cars; where did you introduce any proof as to the gravity of the cars?

Mr. Payne: We haven't yet.

The Court: Go ahead, I will let him answer.

Q. What per cent. would average over 221?

A. From Jenks?

Q. Yes, still at Jenks?

A. About 75 per cent., Jenks.

Q. What would average over 275 Fahrenheit?

A. 80 to 83.

Q. At what point would it average dry?

A. Dry, 240, 265, somewhere around there.

Q. What recovery would it average? A. 80 per cent.

The Court: Now, then, this average here would only be admissible to rebut that. I will let it in for the present.

Q. What do you say average recovery from Jenks would be? A. About eighty per cent.

Q. About eighty per cent. you say? A. Yes, sir.

Q. Now, that distillation that I have just used with respect to that test is the distillation test prescribed by the United States Army and Bureau of Mines, is it?

A. Yes, the Bureau of Mines.

Q. As being the specifications of gasoline? A. Yes, sir.

Q. Now, referring to the blended material from Drumright, what is the average gravity on that during this period of time you have been asked about? A. From Drumright?

Q. Yes? A. It will average from 83 to 84.

Q. No I am talking about the blended material from Drumright, the blended unrefined coming from Drumright, what will that average in gravities?

A. The blended about 77 gravity.

Mr. Payne: I object to the statement of these averages unless it is shown the witness has made the tests on these cars. That is he cannot pick out a particular car and say this is the average.

By the Court: No he would have to make them on all of them.

Q. All these cars that arrive are tested under your direction and for your information?

A. They are tested by the chemist from the laboratory for my information.

Q. And you do and have to keep yourself informed concerning the characteristics displayed by these distillation tests?

A. Yes, sir, I am kept informed.

Q. So that when you speak of the average here, that it is a matter of the current daily knowledge of the business, is that correct.

A. Yes, sir, it will average that in the general run.

Q. Which will embrace all of the cars received at the plant between December 2, 1916 and March 1919?

A. I say it would, yes, sir.

By Mr. Payne: I still object because it has not been shown that he examined the records here.

By the Court: Now have you examined them and made the calculations or are you just testifying as to average by your recollection.

A. No, judge, I watched pretty closely, lately I haven't watched it very closely but this is just what we average.

The Court: I think that is competent.

Q. Have you prepared with you a paper showing the distillation test based on such average?

By the Court: Did you make the comparison in reference to it yourself?

A. Yes, sir, I made the test.

By the Court: Did you go back and see each one of them take the test as to each car and make the paper from that?

A. No, not personally, a man got the sample from the car and brought it in, I don't go out and get the samples.

By the Court: That is alright, that is in the due course of business. If it was his duty to bring it in.

Q. It is in the due course of business to keep and be informed concerning the distillation of those tests of the product coming from Oklahoma? A. Yes, sir.

By the Court: How did you get the average, have you gone back and taken every test, each test of each car and put them down and averaged them?

A. No, sir.

Q. How did you get it?

A. I judged it the way it was going.

By the Court: That is not competent.

By Mr. Swacker: I think it is competent testimony to testify to the characteristics of this material.

By the Court: Yes, but it is not competent to testify to the average unless he has gone back and taken the test and knows what the average is.

By Mr. Swacker: If he knows as a matter of information from day to day in the due course of his duties.

By the Court: This is merely an impression, a matter of recollection, it would just be his recollection.

By Mr. Swacker: I think all testimony is recollection.

By the Court: I would consider that very weak evidence as to what that was. A man could be very easily mistaken if he had gone over a course of a year or a year and a half and now his impression as to these cars as to what would be an average, that would be mighty weak evidence.

By Mr. Swacker: It is the basis on which the refinery is operated, this man's knowledge and information of the subject.

By the Court: They can sit down and figure that out to an absolute certainty from the books.

By Mr. Swacker: They would if it was necessary.

Q. Is it necessary as superintendent of this refinery for you to have figured out the actual averages of the distillation tests or is it sufficient for you to know how to discharge your functions there as the general superintendent of this refinery by seeing from day to day and thus informing yourself of the distillation tests and the characteristics of this product?

A. I am——

By the Court: It is not necessary for you to function there in your duties to know what the average distillation is, is it?

A. No, sir.

By the Court: Your duty is to know as to the tank so you will know what is that is in that car and in making the blend whether or not it will comply with the specifications?

A. Yes, sir.

By the Court: I don't think this witness is qualified to testify to that.

By Mr. Swacker: I think we can show the characteristics of the material by anyone who has knowledge of it.

By the Court: Yes.

By Mr. Swacker: The average could be made up by an auditor, he can say I checked this up and have made the average and here it is. It would be assigned to an expert on figures.

By the Court: Yes.

By Mr. Swacker: I will change it from average then to some other basis.

By the Court: Very well.

Q. Mr. Pritchett do you have a knowledge of the characteristics commonly incident to the product coming to Oklahoma from Port Arthur? A. Yes, sir, I do.

Q. How did you gain that knowledge?

A. By working with it and getting tests on it and knowing the qualifications of it. I can pretty near tell you what it will be.

By Mr. Payne: I move you the average figures by this witness stated, be stricken out.

By the Court: Very well the motion will be sustained.

By Mr. Swacker: An exception.

Q. May I ask the witness as a matter of brevity if the figures you gave as stated average distillation test comport with your knowledge of the characteristics common to this material?

A. Yes, sir.

By Mr. Swacker: May I ask now that it be restored, not as average but to his knowledge of the characteristics to save going over in detail again.

By the Court: If there are no objections.

By Mr. Payne: That seems to me to be doing the same thing indirectly.

By the Court: Yes.

By Mr. Swacker: Yes, because the objection is not substantial in any way. I believe that average in one way will be only a matter of computation as the Court suggests.

By the Court: I will permit him to testify that he knows it was shipped there and he knows it was as low as so and so and as high as so and so. That is as far as he can go.

By Mr. Swacker: Very well.

Q. Then going back to the Jenks material, what is the maximum and minimum gravities you know of?

A. About 80 to 77, 77 to 80 in Baume gravity.

Q. That is unblended material? A. Yes, sir.

Q. Now what does the vapor tension range?



By the Court: That is testify to a fact, that is I know it has been this low and this high.

A. 8 pounds.

Q. What is the low and what is the high that you know of.

A. It has been as low as 7 and as high as eight and eight and one-half.

Q. Now then what has been the range of overpoints?

A. It will vary according to the time that we receive it.

Q. What will be the lowest overpoint and what is the highest overpoint to your knowledge?

A. It varies from 75 to 95 or 100.

Q. What will be the distillation of it at 221 Fahrenheit, the highest and lowest that you know?

By Mr. Payne: I object unless the witness knows of his own knowledge, he is referring to some paper.

By Mr. Swacker: He is not referring to that paper but another one.

By the Court: I will permit that it may be a paper that he is entitled to refer to.

Q. What is that paper?

A. Distillation tests of the different materials.

Q. When was that made up? A. December 6th, 1919.

Q. What period does it cover or tests—

A. Two weeks.

Q. Two weeks test of material when? A. What.

Q. What material when? A. Two weeks test.

Q. Of material received when? A. December 6th, 1919.

By the Court: Was that a record kept and that test made up in due course and a record there—it may be that—that record might be permissible to be introduced in evidence. I will permit any of the records of this concern that were permanent records that were made in the due course of business—the government has introduced some of them and if they are material they can introduce all of them or any part of them that will relate to this case.

Q. Was this paper gotten up for you in the due course of business? A. They made it up from time to time.

Q. In the usual course of business? A. Yes, sir.

By the Court: He says it was made in December, 1919.

Q. And this is 100 cubic centimeter?

A. 100 standard English test.

Q. Have you any of those of a previous date to this?

A. No, I haven't.

Q. You mean you haven't any here?

A. I don't believe we have any previous dates.

Q. A similar statement to this can be readily compiled from those sheets there?

A. I think the chemist could if he took his distillation tests. Of course he don't try vapor tests every time.

Q. Does the use of this enable you in any way to refresh your recollection concerning your experiences of the time previous to this—

By the Court: Why can't you have them go out and take the books and agree on it? Just let these experts take these records and figure them up and whatever they will show give it to the jury.

By the witness: We wouldn't have the records during that time.

By the Court: You would not have the record to compile according to this?

A. No, sir.

By the Court: Pick out any two weeks or any three weeks. You mean you haven't all the items on this sheet?

A. No, they are kept in different departments.

By the Court: You can take such of the records as you have here. The parts that relate to the characteristics that you want to introduce in evidence. Anything further?

By Mr. Swacker: That is all.

By Mr. Payne: Just one or two questions, your honor.

*Redirect Examination by Mr. Payne.*

Q. You spoke of compression or still gas as high gravity gasoline, is that correct?

A. Very high gravity, yes, sir.

Q. And you said, I believe, that that was practically the same as the stuff that came from Kiefer?

A. Practically the same in regard to physical conditions, yes, sir.

Q. So that the stuff that came from Kiefer was high gravity gasoline? A. It didn't meet specifications, no.

Q. I am not talking about that.

The Court: Was it high gravity gasoline?

A. I don't consider anything gasoline except what meets specifications.

The Court: Well, would it be high gravity gasoline as generally termed in the refinery world?

A. Yes, sir.

Mr. Payne: That is all.

*Recross Examination by Mr. Swacker.*

Q. But is isn't called gasoline, is that correct?

A. No, not what I term—

The Court: What you term gasoline is when it is finished in accordance with the specifications of the purchaser?

A. Yes, sir.

The Court: So you don't call anything gasoline until it meets the specifications of the man that buys it for the market?

A. Yes, sir.

The Court: Then there would be different kinds of gasoline wouldn't there?

A. Yes, sir.

The Court: One man would have one specification and another man another. Then how would you distinguish the different kinds of gasoline of that kind?

A. The different specifications called for at different billing points.

The Court: What would you call it?

A. Might call it South Carolina gasoline, motor gasoline, what we used to call Bohme gasoline.

Q. So now, if this commodity that was shipped from Kiefer to Port Arthur, if it met the specifications of the customer for gasoline, then you would call that gasoline, if it did not, if it did not call for any further treatment to meet it?

A. If it did not require any further treatment to make it meet the specifications, it would be classified gasoline.

Mr. Payne: That is all.

*Further Examination by Mr. Swacker.*

Q. And did you ever know of any of this material from Oklahoma that would meet any specifications of gasoline?

A. No, sir, did not.

Q. Can you say,—

The Court: You mean the specifications of those that were ordering it, is that what you mean?

Q. I mean the specifications you ever heard of, of gasoline? A. No, sir.

Q. Of any specifications of any gasoline you—used for any purpose as gasoline?

A. Not that I know of, no, sir.

Q. Never knew of any specifications which this material would meet? A. You are talking now of,—

Q. Of the Oklahoma product, without further treating, either in the way of blending or some process of refining?

A. Nothing I would recommend it for.

Q. You say you know of no specifications in your knowledge in your experience, specifications that this material would meet?

Mr. Payne: I object to that cross examination.

Mr. Swacker: This is on cross examination.

Mr. Payne: He practically made him his witness.

Q. None of this was ever used or shipped as gasoline, is that correct?

A. That is correct, never shipped as gasoline.

Q. Every bit of it that ever came there had to have something done with it before it could be shipped or used on any orders that you had and shipped as gasoline?

The Court: You did not try to use it, you did not inspect it to see whether it would meet the specifications, just unloaded it in the tank?

A. I think you will find the laboratory records of the test.

The Court: I know, while it was tested, you unloaded it in the tank?

A. Yes, sir, and made tests of the tank, and blended it from different tests we got.

The Court: Anything further?

Mr. Swacker: That is all.

Mr. Payne: That is all.

(Witness dismissed.)

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The Court: Have you any further witness that you can use in about ten or fifteen minutes?

Mr. Payne: Yes, sir, one.

The Court: All right. Put him on.

And thereupon S. H. OTEY was recalled for further re-direct examination and testified as follows:

*Redirect Examination by Mr. Payne.*

Q. Mr. Otey, have you checked up your daily test records of shipments northbound from Port Arthur to Kiefer and Drumright?

A. I did as to Mr. Stewart's copy that he had there.

Q. That is you checked up this statement prepared by Mr. Stewart with the record?

A. Yes, sir.

Q. And you found the statement to be correct according to the record, except you couldn't locate two items, is that correct?

A. There is more than two.

Q. Is there more than two you couldn't locate?

A. Yes, sir; two there and one here.

Q. You have located all that you have put a pencil check mark beside and those that are not checked you were not able to find? A. There are some marked "X".

Q. You had better point out the cars you couldn't locate.

A. I will mark X on all I couldn't find. I guess they are here all right. There is one he has marked that is marked in the book "Not shipped."

Mr. Payne: I offer this in evidence.

The Court: Any objection?

Mr. Swacker: Let's see it. We make no objection to this going in with the same force and effect as the books themselves might go in, but we object to its competency otherwise.

The Court: You object to it on the ground of being irrelevant and immaterial?

Mr. Swacker: Yes, sir, and to prove the contents.

Mr. Payne: That is all it is intended for, as a tabulation of the book.

Mr. Diggs: We admit the items there checked by Mr. Otey appear upon our books and may be treated with like force and effect as if the books were introduced in evidence.

The Court: Yes, but you claim it is not competent because irrelevant and immaterial.

Mr. Diggs: Yes, sir, and as not tending to prove any issue in this case.

The Court: Very well, you may have your exception. Any other witnesses you can get through in ten or fifteen minutes?

Mr. Payne: No, he is the only one; the others will take half an hour or so.

The Court: How many more witnesses has the government got?

Mr. Payne: We have at least six more witnesses.

The Court: Now, the way you have been going, that will take two or three days to get those witnesses.

Mr. Payne: No, these witnesses won't.

The Court: Now, I am not going to let you introduce those witnesses covering anything that has been introduced here.

Mr. Payne: They will all cover new matters that have not been gone into.

The Court: Now, how many days does the defense think it will take them? Have you any idea how many days it will take to get in your evidence?

Mr. Diggs: It is impossible for us to tell until we know what the government will do. But from what we know now, it ought not to take over three or four days at the outside; we don't think over two.

The Court: I think in this case the argument ought not to be limited on matters that call for explanation, but I am going to leave here next Saturday, and I won't be back for three or four days, and if you don't get through, I am going to hold this jury here and hold you all here. Now, I mean that. That is fixed.

Court will take a recess until two o'clock p. m., and the jury will go under the usual instructions until two o'clock.

(Whereupon Court took a recess until two o'clock p. m.)

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#### AFTERNOON SESSION, 2 P. M.

(Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the Jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

Whereupon OVERTON E. ABEL, was recalled for the Government for further direct examination.

*Further Direct Examination by Mr. Payne.*

Q. You are the same Mr. Abel that was previously on the stand in this case? A. Yes, sir.

By Mr. Payne: Mark that as Government's Exhibit 107 and this as Government's Exhibit 108.

By Mr. Swacker: I object to that as not being proper evidence.

By Mr. Payne: I have not offered it yet.

By Mr. Swacker: I thought you had.

By Mr. Payne: I am going to in a minute.

Q. I show you government's exhibit 107 and will ask you if that is a statement signed by you and if the statements contained therein are true?

By Mr. Swacker: I object, incompetent, irrelevant and immaterial, the statement he made to Mr. Stewart at the time he was there, that is what it is.

A. Yes, sir.

By the Court: Let me see that.

Q. What is your answer?

By the Court: No they are entitled to have their objection passed on, wait a minute.

By Mr. Swacker: I will not press the objection if the witness is allowed to tell just exactly what it is. I have no objection to that form of the statement.

By the Court: He will be permitted to explain it, the way to do is to ask him if this is not true if so and so is not true and if he says, but if there is any supplemental statement you would be entitled to make it, that of itself is not competent, but if they don't object except to the relevancy and the materiality I will permit it to go in and he can make explanation of the conditions under which he made the statement and he can supplement that and then it is for the jury to determine.

By Mr. Swacker: We will not object to it if the witness is permitted to go on and tell the surrounding circumstances.

By the Court: Yes, he will be.

A. Yes, sir, that is a statement made by Mr. Stewart, prepared in Port Arthur, May 2nd, 1919, and it was signed by me, of course *hurridly*, might be some point in there not just exactly the way it should be.

By Mr. Swacker: Look it over and see if there is



anything that requires further explanation and if you made any further explanation to Mr. Stewart.

Q. I also asked you if the statement made herein was true?

A. Well sometimes we have shipped a gravity slightly higher than 52 and that statement says 51 and 52.

By Mr. Payne: I offer this in evidence.

By the Court: They agree it may be offered in evidence subject to the question of relevancy and materiality. I will permit them to supplement the statement—that all that you want with this witness?

By Mr. Payne: I have another one like it, I will offer it also.

By Mr. Swacker: Is this all of them? There is no question but what we are entitled to have the witness to explain?

By the Court: Sure and I will permit you to have it.

By Mr. Swacker: I don't know, I am willing to let this statement be taken as true and everything stated in it; it relates to shipments, etc. So far as the statement attempts to state the general process I have no objection to it at all except we have a right to have it fully explained.

By the Court: Very well, proceed, offer it and I will pass on it.

Q. I show you Government's Exhibit 108 for identification and will ask if you made that statement and signed it?

By the Court: The question is whether you made that statement?

A. Yes, sir, I signed the statement.

By Mr. Payne: I offer that in evidence.

By Mr. Swacker: The only objection is as to its relevancy and materiality and our having the right to explain it.

By the Court: If you object to it I will exclude that.

By Mr. Swacker: No but I want to cross examine on it.

By the Court: Very well I will permit you to cross examine.

Q. Mr. Abel were you instructed by Mr. Looney the General Superintendent of the Gulf Refining Company to prepare a statement for the Special Agent of the Interstate Commerce Commission?

A. No, sir.

Q. Showing your general processes in the plant?

A. No, sir, I was not instructed by him.

By the Court: Were you instructed by anybody?

A. No, sir.

By Mr. Payne: Is it not a fact that at first you refused to give Mr. Stewart the information without the authorization of Mr. Looney and isn't it a fact that Mr. Looney happened to be in Port Arthur on the particular day that Stewart was there and authorized or directed that statement be given of the process in the refinery.

By the Court: They have agreed that it might be in evidence. They admitted that to go in there subject to the rights of cross examination as to the statements. If it was admissible they would have that right so I will let that go in the record under those conditions.

By the Court: Anything further?

By Mr. Payne: Yes, one or two additional questions.

A. I might make an explanation.

By the Court: Just wait the counsel for the defendant will cross examine you, get it in an orderly way.

Q. Does the Gulf Refining Company market any considerable amount of gasoline in Oklahoma?

A. I am not positive on that point, I think not.

By Mr. Swacker: This witness has not a thing in the world to do with the marketing of the product. He don't know a thing in the world about it. My understanding is that they do not do business in the state of Oklahoma.

A. That is handled by the sales division, the refinery department does not handle the sales business.

By Mr. Payne: May it please the court in view of the doubt as to the competency of this evidence I ask leave to withdraw Government's Exhibit 107 and 108.

By Mr. Swacker: I don't think that is proper at all, they have been admitted in evidence and they are in evidence in the case. And the only objection that could be made to them is by the defendant in the case and certainly the evidence cannot be withdrawn because the government might conclude it was not to their advantage.

By Mr. Payne: I object to that that it is not to our advantage.

By the Court: I will permit you to withdraw it.

By Mr. Payne: Just the manner in putting it in, I

have no objection whatever to all that being shown as we have endeavored to sustain the correctness of the same.

The Court: To my mind, a statement signed by the Assistant Superintendent is not competent.

Mr. Payne: I doubt it.

The Court: You could use it as a basis for asking him about certain facts, but that was not done in the due course of business, a statement made afterwards, and I would have stricken it out on objection.

Mr. Swacker: We don't say this statement is not correct and true, but it is not a full statement of what was given to Mr. Stewart.

The Court: You can ask to supplement it, and I permit it.

*By Mr. Swacker.*

Q. Mr. Abel: When you were down at the plant, when Mr. Stewart visited it, did you give him all the information he asked and source of information with reference to how your business was handled. A. Yes, sir.

Mr. Payne: I was not through with the witness.

Mr. Swacker: I beg your pardon.

*By Mr. Payne.*

Q. Mr. Abel can you state roughly the number of cars of what was billed as unrefined naphtha from Kiefer, Jenks and Drumright to Port Arthur during the period from January 1st, 1917, to April 30, 1919, were?

A. Well, we receive about two hundred cars per month from all stations, just the percentage from those stations I could not say, but I did not keep the record on it.

The Court: Did you examine the books to see?

A. No, sir.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Abel, what percentage of this unrefined naphtha is blended with what percentage of the refinery gasoline, state the maximum and the minimum percentage.

A. It would range from, as low as five per cent to as high as twenty per cent.

Q. Of unrefined naphtha to 80 to 95 refinery gasoline?

A. Yes, sir.

Q. That is, you could only blend off five to twenty per cent. in a blend of this material? A. Yes, sir.

Q. Now, when Mr. Stewart was there making this investigation you did give him a signed statement of certain facts in relation to it, did you. A. Yes, sir.

Q. Who prepared the statement?

A. Mr. Stewart prepared the statement.

Q. Did the statement contain all of the facts that you gave him, or just such as he desired?

The Court: That is withdrawn.

Mr. Swacker: Very well. That is all.

*Redirect Examination by Mr. Payne.*

Q. The Kiefer cars were not always blended with refinery gasoline, were they?

A. Well, we pumped them into the storage tank and they would be blended with the painter's naphtha and gasoline.

Mr. Payne: That is all.

Mr. Swacker: That is all.

(Witness dismissed.)

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And thereupon S. H. OTEY, having been previously sworn was recalled for further examination and testified as follows:

*Redirect Examination by Mr. Payne.*

Q. Are you the same Mr. Otey that was previously on the stand? A. Yes, sir.

Q. In your testimony before, you said something about the sulphur determination test; how often was that test made, and under what circumstances?

A. I don't know under what circumstances, because it was made upstairs by the chemist.

Q. How often was it made?

A. Why it was made every week.

Q. Made once a week?

A. And lots of times they took it during the week, as far as I know.

Q. Now, with reference to the doctor test, how often was that test taken? [A.] Oh, goodness sake!

Q. Is it a fact that the Gulf Refining Company has discontinued the doctor test? A. No, not altogether.

Q. Well, what do you mean, not altogether?

A. Why, in some instances they take doctor tests; they did when I was there. I have not been in there now for pretty near two years; I don't know what is going on in that place in this last two years.

Mr. Swacker: I object to this witness attempting to testify about the whole business of the concern. He has stated his business to be one of eight or nine testers.

The Court: I will permit him to testify what he knows of his own knowledge.

Mr. Payne: That is all. I think the witness has stated everything.

*Cross Examination by Mr. Swacker.*

Q. Mr. Otey, you were one of eight or nine testers?

A. I am.

The Court: How many other testers did you have at that time when you were there?

A. There were three in the light oil department.

The Court: Were you in the light oil department?

A. I was.

Q. And did you handle all of it, or was it handled among you all?

A. No, it was handled among all three of us.

Q. You don't pretend to state what was handled by all of you, but what you did yourself?

A. Only what I was doing.

Mr. Swacker: That is all.

*Further Direct by Mr. Payne.*

Q. Now, is it not a fact the Docter test was not given the gasoline except where it was specially called for, where the specifications called for it? A. I did not hear that.

Q. Is it not a fact that Docter test was given to gasoline only when the specifications of your customers call for gasoline that would pass the Docter test?

A. Why, well, when I was, we, when I was there we used to give the Docter test in a majority of the times.

Q. On what?

A. On gasoline and kerosene and everything.

Q. You made a statement yesterday you made a record on a sheet whenever you took it?

A. Not whenever I took it, sometimes I did and sometimes I did not.

Q. Why was that? A. Just a force of habit.

Q. Just according to the way you felt, was there any reason?

A. There was not any feeling, there was just the way if

we found the stuff was N. G. in the Docter test there was no use of us marking it down.

Q. If you knew it? A. If we absolutely knew it.

Q. What was the purpose for making up the sheet, was it not for the purpose of giving information? A. Certainly was.

Q. What you had in your mind would not convey information to them? A. Certainly.

Q. Mr. Odie, I show you Government's Exhibit- 110 to 117 inclusive and will ask you to state what they are?

A. Why they are records of our distillation tests.

By Mr. Payne: I offer those.

By Mr. Swacker: We object as incompetent, and immaterial; no question of competency in the sense of their being records of the company but we question of their competency in proving their contents.

By Mr. Payne: I forgot to state the period.

Q. State during what period these books cover?

A. I don't know I didn't look at the date. You mean each book separately?

Q. The oldest date and the latest?

A. They start with the 10th month, 14th day and 16th year.

Q. October 14th, 1916?

A. Yes, sir, and run to January 10th, 1917.

By Mr. Payne: I think perhaps they will speak for themselves, the dates are in there.

By the Court: Unless they cover the period you are covering, the period of this indictment.

By Mr. Payne: Yes, sir, just during the period covered by the indictment.

By the Court: That is the only period I will admit them for.

By Mr. Payne: They are offered.

By Mr. Swacker: We object on the grounds of irrelevancy and immateriality and also incompetent as far as proving contents of themselves. We do not dispute they are not competent because they are books of the Gulf Refining Company.

By the Court: I will admit them for whatever they are *worth* so far as they obtain to the issues and where they are within the *period* covered by the indictment.

By Mr. Payne: I might suggest they are the best evidence obtainable.

By Mr. Swacker: May we have an exception?

By the Court: If they cover any other period not within the indictment, they are not admitted.

By Mr. Payne: I only offer them for the period covered by the indictment.

By Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Otey, did you frequently make tests of various kinds and when it was obvious to whoever desired the test that the material was not in proper shape that it became necessary to record these tests? A. Yes, sir.

Q. For example when they made blendings they might make two or three different tries at blending? A. Yes, sir.

Q. And then test this blend then and find out how well they are done? A. Yes, sir.

Q. And if they apparently had not reached specifications there was no need for recording the test?

A. No, sir, there was not.

By Mr. Swacker: That is all.

By the Court: Proceed.

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And thereupon, A. A. TOPPING was recalled as a witness on behalf of the Government for further examination and testified as follows:

*Direct Examination by Mr. Payne.*

Q. You are Mr. A. A. Topping who was previously on the stand? A. I am.

Mr. Payne: Mark this Government's Exhibit 120.

The Court: What is that?

Mr. Payne: This is a statement of the shell capacity of the tank cars in which the cars named in the indictment were transported.

Mr. Swacker: We don't regard that as any evidence at all. We understand that the tariff from which this was taken is in evidence.

Mr. Payne: Yes, sir.

Mr. Swacker: We don't regard this as evidence; have no objection to the witness using it as a memoranda for the benefit of the court—

Mr. Payne: I offer it on the theory where there are a large number of records—



The Court: I will permit him to point out the items if that is in the record. That is taken from the tariffs?

Mr. Payne: Yes, sir.

The Court: That is already in evidence.

Mr. Swacker: That is why I am objecting to him testifying to this.

The Court: Wherever Exhibit 120 conflicts with the record, that falls down.

Mr. Swacker: Of course, we interpose an objection to it being received as evidence since we *the* question the legality of the tariff—

The Court: State whether or not you made an examination of the tariffs in evidence in this case, and tabulated the shell capacity of these tank cars, and whether or not this is a statement of the shell capacity, full shell capacity of the tank cars as shown in the tariff.

A. I did make such an examination, and that is a tabulation taken from the tank gauge book in evidence.

Mr. Payne: That is all.

(Witness dismissed)

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Mr. Payne: May it please the court, here are two letters that were identified yesterday, Government's Exhibits 68 and 69, which I now offer in evidence.

Mr. Swacker: We object to both of those, as being irrelevant and immaterial.

The Court: Pass them up and I will look at them.

Mr. Swacker: They can't possibly prove anything more than we have admitted heretofore subject to the same objection.

The Court: Well, I will permit it.

Mr. Swacker: I think we should make our objection go to the competency as well; we admit its authenticity.

The Court: They offer that to show his relationship with the Gypsy Company, as to whether or not he was directing their—

Mr. Payne: Yes, sir, as specific instances of it.

Mr. Swacker: I don't concede that is a fact. I don't think the record establishes that.

The Court: I think it is competent certainly in view of the record.

Mr. Swacker: We have our exception.

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And thereupon, J. R. FREEMAN, produced and sworn as a witness on behalf of the United States, testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Freeman, and your employment?

A. Joseph R. Freeman; employed by the Carter Oil Company.

Q. What is your position with the Carter Oil Company?

A. I am manager of the gasoline plant and refinery.

Q. Has the Carter Oil Company a plant at Carterco, Oklahoma? A. They have.

Q. Did that plant ship at one time a commodity described in the shipping order as crude, unfinished naphtha?

A. Yes, sir.

Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial.

The Court: On what theory do you claim this is competent?

Mr. Payne: Your honor suggested this morning that we could show that the other rates referred to in the letter of May 16, 1916, applied on a different commodity than the commodity that was shipped here.

The Court: From what point did they ship?

Mr. Payne: Carterco, Oklahoma, and Baton Rouge, Louisiana.

Mr. Diggs: I withdraw that part of the objection as to the competency. I object simply as being irrelevant, immaterial and hearsay.

Q. What kind of a plant—

The Court: If he knows of his own knowledge, I will permit him to testify, and that he shipped it between those two points under that rate.

Q. What kind of a plant has your company at Carterco, or rather what kind of a plant did you have in the year 1916, from May on?

Mr. Diggs: If the court please, can I make the same reservation I did before? I do not want to make objection each time. We don't object to these specifically, but want the right to move to strike hereafter.

The Court: All right.

Q. What kind of a plant did you have there in 1916, from May to December?

A. A skimming plant.

Q. Just what do you do in a skimming plant, very briefly?

A. Top crude oil, skim the top off of crude oil.

Q. And did you ship the top to Baton Rouge?

A. Yes, sir.

*By Mr. Payne.*

Q. Did you have any other machinery—strike that out—Were the tops that were shipped to Baton Rouge Refinery at Corico, did you have any steam stills at Coroco?

A. No, sir, did not.

By Mr. Swacker: I object to the form of the question, there are two or three questions asked together.

By the Court: Just ask him what it was he shipped. What he shipped under that rate between those points.

A. Crude unfinished naphtha.

By the Court: What did that consist of?

A. He stated it was the tops from the skimming plant, that is all.

*Cross Examination by Mr. Swacker.*

Q. —how far down did you top this material, this crude, did you top it down below kerosene, or to kerosene or where?

A. Minimum 3 per cent and a maximum of 22 per cent.

Q. And then only topped the naphtha fractions?

A. Fractions of all products with the exception of kerosene.

Q. Just topped the naphtha fractions down to kerosene?

A. Yes, sir.

By Mr. Swacker: That is all.

By Mr. Payne: Just one further question.

By the Court: Between those points what did you call that town?

By Mr. Payne: Carterco.

By the Court: Where is it?

A. Two and a half miles out of Yale, Oklahoma, between Yale, Oklahoma, and Cushing, Oklahoma.

By the Court: How many refineries there?

A. At that point one but at Yale there are five or six other refineries, similar.

*Further Examination by Mr. Payne.*

Q. Mr. Freeman, did you ship it under the crude unfinished naphtha rate?

By the Court: Was it unfinished or unrefined?

By Mr. Payne: He stated unfinished.

*By Mr. Payne.*

Q. Did you ship it under that rate, any commodity other than the one you describe? A. No, sir.

By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and calling for a conclusion of the witness.

By Mr. Payne: This goes to the intent, I believe motive and intent.

By Mr. Diggs: He is not charged with any motive or intent.

By the Court: I don't understand.

By Mr. Diggs: He says he is offering this on the question of motive and intent; there isn't any question of motive or intent of the Carter Oil Company.

By the Court: No, this is on the question of interpreting the letter, from Mr. Ellis where he refers to the same kind of commodity shipped from those points under that rate.

By Mr. Payne: Yes.

By the Court: And I admit it solely to throw light on what that meant.

By Mr. Diggs: He offers it for the purpose of showing motive and intent.

By the Court: I am admitting it on that ground, solely, wouldn't permit it on anything else, except that is in that letter and he refers to it so as to show what is meant by that.

By Mr. Diggs: I have no objection to it on that line.

By the Court: That is the only purpose it is admitted for.

Q. Was there any casinghead gasoline in the product that you shipped?

By the Court: And I will instruct the jury that this is not for them to determine by comparison but just offered to show the commodity that was shipped. If the other side can go and show another commodity was shipped between those points I will permit them to do that to throw light on what that meant.

Q. What was your answer to the last question as to whether it had any casinghead gasoline it is? A. No, sir.

By Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Freeman, yours is the only thing that would be unrefined or unfinished naphtha the product of a topping plant?

By Mr. Payne: I object as calling for an opinion and improper cross examination.

By the Court: If he is qualified to answer the question I will permit him to do that, even though you make him your witness to do it. I will permit you to answer the question.

Q. Will you answer the question? A. Please read it.

By the Court: Do you concede he is qualified as an expert to answer it?

By Mr. Swacker: No, I do not concede it.

By the Court: If you are going to make him an expert as to his knowledge about the character of a commodity that would go by that name—that—

Q. I will put it another way. Have you known the name, crude unfinished naphtha to be applied to naphtha fractions other than those that may be a product of a topping plant.

By the Court: You may answer that if you know.

A. The question is misleading. I do not understand.

Q. I say have you known the term crude, unfinished naphtha to be applied to any naphtha fractions which may be the result of production in some other fashion other than by a topping plant? A. Yes, sir.

By Mr. Swacker: That is all.

(Witness excused)

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The Court: Call the next witness.

Mr. Payne: May it please the court, we have no further witnesses ready—we do not feel safe in resting the case, as we have had no opportunity to check up, we have been under such a forced drive all week, and I ask leave of the court to rest the case conditionally, tentatively—

The Court: You have already in the record the permission to introduce evidence as to the Director General, as to those rates.

Mr. Payne: Yes, sir, I have some telegrams from Washington which informed me there was such an order made, it was on December 26th before the railroads were taken over.

The Court: I will permit you to introduce the proper evidence as to those matters at any time during the trial, and I will permit you, after you have checked up, if there is any matter, it will be within the discretion of the court. You rest now, and the court will give you permission to introduce other evidence within his discretion. When you rest, I am not going to let you come in and say—come in Monday morning—you will have to show me about it.

Mr. Payne: Really, we have had no time to go over the record.

The Court: I will exercise the matter of discretion, if there are any material matters overlooked, if you had rested without making that reservation, I would exercise discretion and permit that, to meet the ends of justice.

Mr. Payne: Perhaps it would be better for the government to move a continuance until Monday morning.

The Court: On the statement that all the evidence is not ready, the court will take a recess until Monday morning at 9:30, and I will say that I expect the government not to take up much time on Monday with this case. The jury will now be permitted to go until 9:30 Monday morning, with the usual caution to be careful. Here is a long case, and the indiscreet conduct of one juror might require this case to be tried over. I give you that caution as to how important it is to be careful, and not permit anybody to talk to you about this case in your presence, don't let them talk to you about it. If anybody starts to talk to you about the case, in your presence, get away from them, or make them stop.

Now, the jury will be permitted to go under these instructions, together with all the other precautionary instructions I have given you since you have been empaneled.

The court will now take a recess until 9:30 Monday morning.

Whereupon, court took an adjournment until 9:30 o'clock a. m., Monday, April 19, A. D. 1920.

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MONDAY MORNING, APRIL 19TH, 1920.

Nine-thirty, A. M.

(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be

present, and counsel for the plaintiff and counsel for the defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

By the Court: Now, are you ready to take up this case?

By Mr. Payne: Yes, your honor.

By the Court: Now, there is one thing that I remember. One of the witnesses, I believe Mr. Otie, that he was given a record to see whether or not that Kiefer shipment was entered by any other name. He was never put back on the witness stand to tell what his investigation was. See whether the shipment was entered Kiefer Gasoline or just Kiefer and whether or not it was entered by any other name on that book.

By Mr. Payne: My recollection is that was gone into on cross examination.

By the Court: He was never put back.

By Mr. Payne: Two or three instances were shown where he made entries of just Kiefer.

By the Court: Sure, but there was one place where it was referred to another to as Kiefer and then I asked the question whether it was ever referred to as Kiefer gas and he said he did not know and he was instructed to take the record and was to be called back. He was never put back on the witness stand. I know, I can remember, I know he was.

By Mr. Chambers: The first witness we want to introduce is Mr. Sanderson to identify some correspondence.

By Mr. Diggs: We will admit this is correspondence.

By Mr. Chambers: Taken out of the files.

By Mr. Diggs: Yes.

By the Court: It is admitted that these are records taken out of the files of the defendant company. Do they show the date.

By Mr. Chambers: All but that one.

By Mr. Payne: Not the defendant company, the Gypsy Company.

By the Court: Well, the Gypsy Company, letters from Mr. Ellis to Mr. Donovan. And they admit they are the letters written and signed by C. B. Ellis.

By Mr. Chambers: These are copies if the court please.



By the Court: No point made on copies.

By Mr. Chambers: No.

By Mr. Swacker: That has no date on it and by its subject-matter it is obviously before the times related in the indictment.

By the Court: I will permit this——

By Mr. Chambers: Now, we offer Government's Exhibits 135, 136, 137 and 138 in evidence.

By Mr. Diggs: The defendant objects to each of these exhibits on the ground of relevancy and materiality. We don't object on the ground they are not proven to be our papers.

By the Court: Very well, you have your exception on the ground of irrelevancy and immateriality.

By Mr. Payne: May it please the court to make the record complete we wish to offer in evidence the pumping record of the Gulf Refining Company. I understand Judge Diggs will not raise any objection.

By Mr. Diggs: The understanding is I don't require you to prove these are our records.

By the Court: They admit they are records of the Gulf Refining Company. Do they show the period that cover——

By Mr. Payne: Yes, sir, the period covered by the indictment.

By the Court: They are admitted where they are within the period covered by the indictment and not when they are without that period. The records could be diminished if it became essential later.

By Mr. Payne: These are Government's Exhibit from 120 to 134, both inclusive. That is they are the pump records of the Gulf Refining Company at the Port Arthur plant.

By Mr. Diggs: The defendant admits Government's Exhibits from 120 to 134 are the records of the Company but object to the evidence on the grounds they are irrelevant and immaterial.

By the Court: I will permit them, where they are within the period covered by the indictment.

By Mr. Diggs: We object on the same ground.

By the Court: Overruled.

By Mr. Diggs: Give us an exception.

By the Court: It will be sustained wherever they are without the period covered by the indictment, but where they are within the period covered by the indictment the objection is overruled as to being irrelevant and immaterial.

By Mr. Payne: May it please the court, Exhibit-10, 11, 12, 13 and 14 being the unloading records of the Gulf Refining Company at Port Arthur plant showing the numbers of the tanks into which the cars in the indictment were pumped during the period from September 12th, 1916, to June 25th, 1919, were not put in evidence and to make the record complete we offer these.

By the Court: You agree those are records of the defendant?

By Mr. Diggs: Yes, sir.

The Court: Any objection?

Mr. Diggs: Object as being incompetent and irrelevant.

The Court: Such facts of the record will be considered as it pertains to the matters in this case. If it becomes necessary the other part of the record may be eliminated on motion, either now or after this case is tried.

By Mr. Payne: I might explain the first book starts a little prior to the period in the indictment.

By the Court: Only such part of these records will be considered in evidence as are within the period and dates covered by the indictment.

Mr. Payne: May it please the court, on page 706 of the record, being the record for Friday afternoon, if I remember correctly, the afternoon the Railroad Traffic officials were on the stand, their letters were offered at that time, but were not admitted in evidence until later, and on page 706 it was stated just before we adjourned: "I move the court the exhibits referred to a few minutes ago be admitted in evidence." For the benefit of the record, may I state that the exhibits there referred to are exhibit numbers 85, 92, 88, 89, 91, 90, 86, 87, 98 and 93.

May it please the court, in reference to the tariff situation, just after the beginning of government control, I offer a certified copy by the Interstate Commerce Commission, of Order No. 1 of the Director General of Railroads, and in connection with that would call the court's attention to the President's proclamation of December 26, 1917, of which I take it the court will take judicial notice, which states:

"That the usual and ordinary course of business of carriers be continued in the names of the railroad companies until the Director General changes them by general or special orders."

So that——

Mr. Swacker: We maintain that that is not an adoption of the tariffs in the manner and form provided by law. The President's proclamation provides that the manner and form theretofore established shall continue.

The Court: Let me see the proclamation.

Mr. Payne: Your honor, I was told by telegram that it was being sent, but it has not yet been received.

The Court: The proclamation is printed in the statutes at large, and you ought to be able to find them here.

Mr. Payne: We have tried to locate one, but we have been unsuccessful.

The Court: Now, for the present, I will overrule the objection and give you an exception, but I will examine further into this if you will let me have this at noon.

Mr. Swacker: I might state what the manner and form is.

The Court: Yes.

Mr. Swacker: Section 6 of the Interstate Commerce Commission Act provides that the Commission shall establish rules and regulations governing the construction and filing of tariffs. I put in evidence the Commission's rules and regulations the other day. They are in 18-A and supplement 3 thereof. I called attention to 9-J, which provides rules and forms of adoption of tariffs. The proclamation of the President provides that the Interstate Commerce Act and all orders of the Interstate Commerce Commission theretofore made not in conflict with the proclamation would remain in force and effect. Now, if this order of the Director General is an effort at adoption, it would not conform to the President's proclamation.

By the Court: Very well.

By Mr. Payne: Right in that connection I call attention to paragraph 7, of order number 1, which states "Existing schedules of rates are to be observed."

By Mr. Swacker: That is what I have reference to.

By Mr. Payne: Now in that connection I wish to refer the court to the Berwin White case, 235 U. S. 371, in which a letter was filed with the Commission stating

what a demurrage charge would be. Now the bill of certification of the Interstate Commerce Commission says that this order was kept in the files of the Commission. Now the analogy is quite close, if a letter filed with the Commission by the Railroad Company.

The Court: They say that although that was filed it was not filed in accordance with the rules promulgated.

By Mr. Swacker: Was not posted and filed regularly in accordance with the rule.

By Mr. Payne: The Berwin White case relates to that.

By the Court: They don't make the point the letter was not file- but they say that although it may have been filed it doesn't comply with the pre-war rules which the President did not abrogate in his proclamation.

By Mr. Swacker: Yes, sir, and I say the Berwin White case does not control because there is a substantial difference.

By the Court: I want to examine the case and then I will give you my views on it and then you point out where they may not comprehend all the facts in the case.

By the Court: Always go on the theory whenever I practiced law I would much prefer to know what the judge thought about it in advance to making my argument then I would know what to direct my attention to, otherwise you are just beating the air. It is to be assumed that because a judge may have a *prima facie* opinion that it is not a fixed opinion. Proceed.

By Mr. Payne: May it please the court, I just want to call the attention of the court to the fact that there has been no expert testimony with reference to the rate and I would like to ask whether the court wishes that taken up now or would he prefer—

By the Court: I want you to keep Mr. Topping here so when the case is closed and matter I don't understand about the rate he will be here available for the benefit of the court. The way I understand it there is no conflict what the rate is and that is just like a written contract and that is to be construed by the court as a matter of law.

By Mr. Payne: Yes, the authorities clearly hold that.

By the Court: Now is not the time to show that then.

By Mr. Payne: Alright I just wanted to find out the wishes of the court. The government rests.

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By Mr. Diggs: The defendant moves to strike from the record the admissions heretofore made by the defendant as to the Gulf Oil Corporation owning the stock of the Gulf Refining Company and the Gypsy Oil Company and the Gulf Pipe Line Company of Oklahoma on the ground and for the reason the government has not made such admissions relevant and materially introducing evidence showing, or tending to show, the dominance and control of the Gulf Refining Company, the Gypsy Oil Company and the Gulf Pipe Line Company by the Gulf Oil Corporation, or that said companies are run and controlled by the same officers, or that a separate corporate existence and independence of each of said corporations is not maintained.

The defendant further moves the court to strike from the record and from the consideration of the jury the evidence introduced by the government, over the objections of the defendant, showing, or tending to show, the method of doing business by the Gypsy Oil Company at its casing-head gasoline plant and the statement of the employees of the Gypsy Oil Company as to the nature and *guilty* of the articles produced, and the evidence showing, or tending to show, that the articles produced were, at the time referred to, as gasoline, on the ground that the same is irrelevant and immaterial in that they are shown to be the acts and declarations performed and made by third person not under the guidance or control of this defendant; and that no such dominance or control of the Gypsy Oil Company and its employees, by this defendant, has been shown to make the acts and declarations competent evidence as admissions against this defendant; nor has it been shown said acts were performed and statements made in the presence or hearing of this defendant or any officer or agent of this defendant; or that same were ever made to the knowledge of this defendant under such circumstances and conditions which would make such acts and statements in the presence or hearing of the agents of this company, of this defendant evidence against it, and referring particularly to such statements and declarations shown in the evidence by J. H. Reidman, Walter Millard, C. E. Sweet, Frank Ralph, H. W. Morris, Joseph Manson.

The defendant also moves to strike from the record all evidence that the Gypsy Oil Company shipped this product, known as casinghead gasoline, south or north before the second day of December, 1916, and shipped same under the name of gasoline, on the ground that said evidence is irrelevant and immaterial as to the guilt of this defendant; and on the further grounds that it does not appear from the evidence of the government that the product shipped prior to December 2, 1916, was not lawfully shipped and described as provided by the tariff rules and regulations; and on the further ground that said evidence as to this defendant is hearsay; and on the further ground that said evidence cannot be competent and material against this defendant on the ground and for the reason that the government has not shown that said shipments were made under like conditions and circumstances and subject to the same regulations and laws as to the shipments made after December 2, 1916, and for the same reason and on the same grounds moves to exclude all evidence of shipments north after December 2, 1916; and all admissions of the defendant that the Gypsy Oil Company shipped such product north and south prior to December 2, 1916, and described same as gasoline as being irrelevant and immaterial on the ground above stated, and no evidence has been introduced by the government that would tend to make such admissions relevant and material against the defendant; and on the further ground that such evidence and said admissions do not prove, or tend to prove, against this defendant the nature and quality of the articles shipped and could only become competent, material and relevant if the government had proved the substance shipped to be gasoline.

The defendant moves to strike from the record all evidences relating to the Tribes Gasoline Company, and Ajax Gasoline Company, the Akin Gasoline Company, the Monarch Gasoline Company, the Eagle Gasoline Company, the Motor Fuel Company, Chestnutt and Smith Gasoline Company, Oil States Gasoline Company, I don't know whether the name should be Oil States or All States the Totem Gasoline Company, Crosby and Gillespie Gasoline Company as to how their plants are operated, the nature of the product produced, how such product was billed and sold, the name under which it was produced and sold, the name by which it was generally called and known among the other employees of said companies at the plants producing the same for the reasons and on the grounds that same is irrelevant and immaterial against this de-

fendant and is hearsay, and is "res inter alios acta"; and on the further ground that it does not prove such usage as would be binding upon this defendant, it not being shown that such facts came to the knowledge of the defendant or even to the knowledge of the Gypsy Oil Company, the defendant being a Texas Corporation and it not being shown that it had any business dealings or connection with any of the companies or persons named; and on the further ground that such evidence does not prove and cannot prove or establish a custom in this, that it is not shown to be general and cover all persons dealing in the article or to include sellers or buyers as well as the employees in the plants, and in this connection particularly moves to strike the evidence of C. C. Waddell, George Anderson, Charles McCarroll, W. K. Holmes, James Baxtus Saint in such regard.

The defendant moves to strike the admission made by it as to the fact of shipments to the Texas Company set out in counts 36 and 81 of the indictment on the ground that same is irrelevant and immaterial and the government has introduced no evidence making, or tending to make, the facts admitted in such admission relevant and material evidence against this defendant. The defendant moves to strike the evidence of John R. Haich as to the gasoline plants of the Ajax Gasoline Company, Totem Gasoline Company, Jontil Gasoline Company, Kelly Gasoline Company, Swanson and Black Gasoline Company, Texas Company, Oklahoma Petroleum and Gas Company, All States Gasoline Company and Gypsy Oil Company as evidence in regard to the method of the operation of said plants, the nature of the commodity produced by said plants, names by which it was billed and shipped from said plants and what such commodity was generally called by the employees of said plants on the ground and for the reason that same is irrelevant and immaterial to any fact at issue in this cause, is hearsay as to this defendant, and being transactions, conversations and declarations by parties not connected with the defendant, and not made in the presence of any of its agents or employees and is not evidence proving or tending to prove, that the nature of the commodity shipped to and received by the Gulf Refining Company, set out in the indictment was gasoline, and on the further grounds that it appears the practice of said plants that the bills describing and the articles shipped as gasoline was done under the direction of the superior officers of the witness testifying in accordance with the customs of other persons not shown.



The defendant moves to strike the evidence of E. J. League as to the nature of the product inspected by him as evidence as to what the product produced by casing-head gasoline plants in the Oklahoma district is called, and the conversation with Mr. Donovan and Mr. Millard as to the nature of the product produced by the Gypsy Oil Company and what they called the product and also moves to strike Government Exhibits Number 58 and 59, being a report of such witness as to the Gypsy Oil Company product; and also moves to strike that portion of the evidence of said witness relating to the product of the Franchot plant and how such product was commonly known by the employees in the plant on the ground that same is hearsay, irrelevant and immaterial to any issue in this cause being as to this defendant hearsay and transactions between third parties with whom it is not shown this defendant is in any way connected.

The defendant moves to strike the evidence of J. S. Scott as to what the employees at the casinghead gasoline plants in Oklahoma called the products produced by them and how such plants billed and described such products and as to the custom of the employees of such plants calling such products gasoline, on the ground that the same is irrelevant and immaterial "*res inter alios*" as to this defendant and not being shown to have come to the knowledge of this defendant and on the ground that such evidence is incompetent to prove the nature of the product shipped to and received by this defendant as set out in the indictment; and on the further ground that the alleged custom or usage attempted to be set forth is not shown to be known to this defendant; and on the further ground that custom and usage is not competent evidence to prove the nature of the product described in the indictment as being shipped to and received by the defendant on the further grounds that the alleged custom is not shown to be general, to the buyer and the shipping public but is confined to certain localities.

The defendant moves to strike the evidence of A. W. Barnhart as to the processes of the Franchot plant on the ground that same is irrelevant and immaterial to prove the nature of the commodity which the indictment charges was shipped to and received by the Gulf Refining Company and the nature of such product cannot be proved or established by the practices, customs, usages, acts or declarations of third persons, and with whom this defendant is in no wise connected.

The defendant moves to strike Government Exhibits Nos. 66, 68, 69, 86, 87, 88, 95, 97, 98, 100 to 106 inclusive, and also Government Exhibits Nos. 110 to 117 inclusive, and also Government Exhibits 135, 136, 138, 120 to 134 inclusive, 10, 11, 12, 13 and 14 in the tabulated statement checked by Witness Otie No. . . . on the ground that said exhibits are irrelevant and immaterial to any issues in this cause and do not prove or tend to prove that the commodity charged in the indictment to have been shipped to and received by the defendant was gasoline and does not tend to prove or disprove that the commodity described in said indictment was not unrefined naphtha, and on the further grounds it is incompetent to prove the nature of the commodity shipped by declarations or practices of third persons.

The defendant moves to strike the evidence of J. W. Freeman as to the nature of the product of the Carter Oil Company, its plant at Carterco and by what terms it was described and spoken of, and billed and shipped as being irrelevant and immaterial as to any issues in this cause and not proving or tending to prove the nature of the commodity charged in the indictment to have been shipped to and received by this defendant, and on the further ground that the nature of such commodity cannot be proved or established by acts or declarations of third parties with whom this defendant is not connected.

The defendant moves to strike from the record all evidence as to the operation of casinghead gasoline companies in the manufacturing and shipment of the commodities produced by them; and as to all statements of the employees of said companies; as to the nature, quality and physical characteristics of said commodity produced by them and how said product was called and described by the employees of said companies, or by others in the neighborhood of said companies on the grounds that same are irrelevant and immaterial to any issue in this cause, and on the further grounds that same constitutes transactions between third parties and are hearsay as to this defendant, and on the further ground that same is intended to prove the commission of a crime by the defendants by the declarations of third parties without the knowledge of the defendants by showing such third parties called a certain product by a name designated by them without evidence that the product designated by them was identical in its properties, physical and chemical constituents and attributes to the commodity which the indictment charges was shipped to and received by

the defendant; and on the further grounds that such evidence cannot prove the defendant guilty of the crime charged, being the acts, established usages, customs and practices indulged in by third parties.

Mr. Diggs: As far as the defendant is concerned, if the court please, we are willing that the court reserve its ruling on this until the close of our case. As the court has intimated he would like to hear argument and the whole matter can be presented more consistently, we believe in one argument.

The Court: Very well.

WILLIAM A. SLATER, called as a witness on behalf of the defendant, after being first duly sworn and examined, testified as follows:

*Direct Examination by Mr. Green.*

Q. Your name is William A. Slater? A. Yes, sir.

Q. Where do you live? A. Port Arthur, Texas.

Q. What is your business?

A. Assistant superintendent, Gulf Refining Company.

Q. At Port Arthur, your home? A. Yes, sir.

Q. Will you state briefly, for the benefit of the court and the jury, what training and experience you have had to fit you for and as an oil refiner?

A. I have a Bachelor of Science degree in industrial chemistry. I have been with the Gulf Refining Company since October, 1907, and have worked in the laboratory and as an engineer. I constructed and operated the Fort Worth Refinery and have since been moved to Port Arthur as assistant superintendent.

Q. You say you received your degree in 1907? A. Yes.

Q. Since that time, you have been continuously in various phases of the oil business? A. I have.

Q. Were you or not, ever in charge of the casinghead gasoline plant of the Gypsy Oil Company in Oklahoma?

A. Mr. Donovan—

Q. Answer yes or no. A. Yes, I was.

Q. Now when? A. From April until August, 1919.

Q. You mentioned Mr. Donovan.

A. I relieved him when he was ill.

Q. And did you or not remain there after his death?

A. I did.

Q. Until a successor for him was appointed? A. Yes.

Q. In that capacity, in a general way, what were your general duties there with reference to this product which we term unrefined naphtha?

A. I was responsible for the manufacture of the product from the gas delivered to the casinghead plant.

Q. Anything further?

A. For the repair and upkeep, responsible for the shipment, responsible for any expansion of the business.

Q. From your observation and experience at that plant, are you able to state to the court and jury what was the Baume' gravity of that product and the vapor tension as shipped, giving maximum and minimum? Answer that yes or no? A. Yes.

Q. Will you please state now the Baume' gravity and the vapor tension of the weathered unrefined naphtha as shipped from Jenks?

Mr. Chambers: If the court please, wouldn't the record be the best evidence of that?

Mr. Green: I am asking of his own knowledge.

The Court: I will let you see if he is qualified; if you want to test him. If he has an independent knowledge, outside of the record, he may testify to that.

Mr. Chambers: What records are you talking about, or these commodities at what point?

A. He was asking me from Jenks to Port Arthur on unrefined naphtha.

Mr. Chambers: Is that the commodity shipped from Jenks to Port Arthur?

A. Yes.

Mr. Chambers. During what time?

A. During the time that I was in charge of the plant.

The Court. Now, what year were you there?

A. From April until August.

The Court: What year?

A. 1919.

The Court: Now, where do you get your knowledge; you say you have the knowledge; where do you get it?

A. From records and information given me by the employees.

A. At the time you were there?

The Court: When did you get this information?

A. During the time I was there.

The Court: I will permit you to put the record in evidence, and then when you put the records in evidence, I will permit him to state that he is familiar with these records and have been over them and what they are, for the benefit of the jury.

Mr. Green: Just to make the matter clear, this is the man who was there in charge of that plant, and operated it; but to get the matter in concrete form and before the jury, I am asking him to testify not to records but from his knowledge gained there at the plant.

The Court: No. Now, if those records were destroyed and the best evidence was not obtainable, he could do this; but as long as those records exist, they must be put in evidence, so they can be searched. If they are voluminous records, I will permit him to testify as to what those records show, for the benefit of the jury.

Mr. Green: I think most of the material records are in evidence, but I want him to give the maximum and the minimum. My main purpose is to get this in such shape that we can put hypothetical questions.

The Court: No, but you will have to get the records in evidence; then I will permit him to state. If he made the experiment and made the entries, although they are matters of record, I will permit him to state on his own recollection he remembered what the maximum and the minimum was.

Mr. Green: That is exactly what I had in mind.

The Court: Have you a recollection—do you know, independent of what the records show?

A. I do.

The Court: Well, if he knows independent of what the records show, of his own knowledge, I will permit him to testify.

Mr. Chambers: May I ask a question?

The Court: Very well.

Mr. Chambers: Were you in Jenks during that time?

A. I was.

Q. Did you make the tests? A. I did not.

Q. Who made the tests?

A. The man in charge of the plant.

Q. Then your testimony would be what he reported to you? A. Yes, sir.

Mr. Green: We show the knowledge came to him as being in charge of the business.

The Court: If they made it under his supervision and made the report to him daily, I will permit him to testify.

Mr. Green: That is our position.

The Court: Well, if he is qualified to answer that, if he was there and they are working under him daily, and he knows that information came to him daily, that is, him doing it, when they are doing it under him.

Mr. Green: That is our position.

*Examination (Cont'd) by Mr. Green.*

Q. Now, when you were in charge of these plants in Oklahoma, state to the court just how these matters were handled, and how the information came to you in the course of the business?

A. Information came to me by reports and by telephone conversation and by personal visits to the plant.

Q. How often in the course of the business there?

A. I make practically a visit to the Jenks plant every week.

Q. Were these matters under your immediate direction?

A. They were.

Q. You were responsible for them? A. I was.

Q. And were they all done and carried out in accordance with orders from you? A. They were.

*Examination by Mr. Chambers.*

Q. Now, you were located at Tulsa all that time?

A. I was living in Tulsa at that time.

Q. You were not there and did not see the tests made and don't know the manner in which they were made, except as they stated them to you? The reports were made to you here in Tulsa? A. Some of them.

Q. Weren't all of the reports made to you here in Tulsa?

A. Some of the reports were made to me while I was in Jenks.

Q. Your office was here in Tulsa? A. Yes, sir.

Q. It was their custom to send the reports to Tulsa?

A. Yes, sir.

Q. You would visit the plant once a week for the purpose of looking over the whole institution? You would visit one plant one week and another plant another?

The Court: I expect you had better introduce the

records. After you introduce the records, I will let him testify.

Mr. Green: Your honor, I think this the proper way.

The Court: Well, now, I am not going to permit this evidence unless you show me some authority.

Q. You stated that you visited Jenks once a week at least?

The Court: No, he didn't say at least.

Q. Well, once a week—well, state to the court when you did. That is merely a predicate I am leading to.

A. I visited Jenks about once a week.

Q. Now, then, was that the only information you got from Jenks?

A. I had information over the telephone; I had information by records.

Q. Now, you say over the telephone; how often?

A. Perhaps daily.

Q. Was it or not as often as shipments were made?

A. I don't know that.

The Court: He would only get that by hearsay himself. Now, these tests, were records made of them in the plant?

A. Yes.

The Court: I think you ought to introduce these records, and after you introduce these records, I will permit him to state, after you have that predicate.

Mr. Green: I am not asking for the average from the records but his personal knowledge. I propose to show by him that he knows and that what he is testifying he knows.

The Court: No, but the record shows different, he doesn't know.

Mr. Green: We save our exception.

The Court: He has stated when the tests were made, he was at Tulsa; that he went down to Jenks about once a week, and that he got reports perhaps daily over the 'phone. Now, that is the extent of his knowledge.

Mr. Green: I don't want to be captious with the court about this. Of course, he couldn't have been at Jenks all the time because he had supervision of all of these plants.

The Court: I will permit you to do that, if you will introduce the record.



Mr. Green: Well, for the purpose of the record, we will just take our exception.

The Court: Very well. If you have any authorities on this evidence, I will hear you. The way I understand, you are required to produce the best evidence. I think that is the rule of law. I will hear you, Mr. Swacker.

Mr. Swacker: When a man is testifying to a matter of knowledge which is a matter he acquires in a course of long series of events, even though it is in a measure hearsay, it is receivable in evidence as knowledge.

The Court: (Reading from Wigmore on Evidence and Knowledge.) "Under the general principle of knowledge, testimony founded not on personal observation, but on the information of others, is inadmissible. But this cannot be enforced as a rule of unbending rigidity. There must be exceptions; the affairs of life often recognize a practical trustworthiness in beliefs not founded altogether on personal observation." That is the section you refer to?

Mr. Swacker: Yes, sir.

The Court: (Continuing reading) "The law of evidence must follow the facts of life as closely as is consistent with caution. In a number of instances, it has recognized exceptions to the rule. The records of a public office are not personally known by the official successors to be authentic. But their place of custody is of itself sufficient circumstantial evidence of genuineness; and for much the same reason, the belief of the succeeding incumbents is recognized as competent knowledge. In this and a few related ways, the testimony of a public officer, and even of private persons having to do with a mass of records, may be received. So, too, a public officer's certificate of entry of a transaction actually performed by his subordinate, not by himself, may be received. But this is not conceded for the account books of a private person. The use of scientific instruments, apparatus, and calculating tables, involves to some extent a dependence on the statement of others, even of anonymous observers. Yet, on the other hand, it is not feasible for the scientific man to test every instrument himself; while, on the other hands, he finds that practically the standard methods are sufficiently to be trusted. Thus the use of a vacuum-ray machine may give correct knowledge, though the user may neither have seen the object with his own eyes nor have made the calculations and adjustments on which the machine's trust-

worthiness depends. The adequacy of knowledge thus gained is recognized for a variety of standard instruments. In some instances, the calculating tables or statistical results are admitted directly, under an exception to the hearsay rule."

Well, now the test they made, they are by scientific men, they didn't doubt but what they were admissible. You can state that tests were made, but now the question here is, how do you find out the tests were made? I permitted them to prove these sample boys went down and got the samples, that is a practice. I don't believe he can testify to this, unless you introduce the records or show they are lost.

Mr. Green: Your honor, I may be wrong about it, but it is my firm conviction it is admissible evidence, and I simply want to take an exception.

The Court: I was trying to point out a way to get it before the jury. If you have the records in your possession, why, I won't require you to read every record to the jury. It says it must be introduced here. "Under the general principle of knowledge, testimony founded not on personal observation, but on the information of others, is inadmissible. But this cannot be enforced as a rule of unbending rigidity. There must be exceptions; for the affairs of life," etc.

But it says it must be done under the rules of caution.

Mr. Green: Now, if the court will just hear me a minute, I am so firmly convinced that that is not necessary that I doubt these records are here. I have no objection to them.

The Court: Well, they are down at Jenks.

Mr. Green: They may be necessary, and we may conclude, and may not conclude, to follow that course.

The Court: If you bring them up here, I will require that you let the government have an opportunity to examine them. I won't require you to encumber this record with them.

Mr. Swacker: They are in the government's possession now.

Mr. Green: We are not trying to keep them out, but I am trying to keep this down in a concrete form. We are not trying to conceal a record, and if they can show—

The Court: So they can have an expert to run through them as an auditor and tabulate them.

Mr. Swacker: I mean to say they are in the hands of the clerk.

Mr. Chambers: As I understand the proposition, they are asking this man from his own knowledge, which he has shown is not his own knowledge.

The Court: I don't care a cent. I am going on with this trial now. I am not going to let them prove this knowledge when you have got a way.

Mr. Chambers: He don't know all of the record. The only way he could know that from the entire record.

The Court: You had just as well now start out to conform to my idea. I am not going to let him introduce in evidence, any evidence the government has not got a fair show to answer. If they show me you have got the records in your possession and have records on there and verify what I say, I will let him answer.

Mr. Chambers: I want to make another objection. That is, these records are not during the time covered by the indictment, but after August, 1919. The indictment is up to May. Now, these are from April to August.

The Court: Well, I will only permit him to answer from April to May.

Mr. Green: He was there shortly before. The reason I covered the whole matter was, as I recollect, the court may let certain matters in for the government. I am not disposed to insist on the time except within the indictment. I merely wanted to get this in form to get it before our experts.

Mr. Chambers: Does the court appreciate the fact they are asking for a minimum and maximum averages?

Mr. Green: Not averages.

Mr. Chambers: No, not averages. And this man's testimony does not go to the fact even that he heard all of these reports. Those reports are of an absolute record.

The Court: I don't believe I will let him answer.

Mr. Green: Just note our exception.

The Court: You can get the records and show them to him, and if they don't agree to that, I will let you put him back on the stand, and the government has got to come across to expedite this hearing. I am going to put the strong arm also on you fellows, like I did on the other side.

Mr. Chambers: All right.

The Court: It looks to me like this is a matter of compilation. Take the books, take an expert with you, and go out and figure it up.

Mr. Green: The only purpose I have is to get it before him so I can ask and follow it up with some other questions.

The Court: I see, you lay the predicate, for the experts, and that becomes important, to have that predicate absolutely accurate.

Mr. Green: Yes, sir, and if I did not believe this witness was going to tell the absolute truth,—

The Court: I will let that witness go out and take an expert and make these calculations and come back here and testify to it, and if the government wants to verify it, they can have an expert right along while they are figuring it.

Mr. Green: That is a very cumbersome method, if a man knows.

The Court: But I don't think his evidence is competent now, but I was going to let it in anyway, when I saw it was fair for the purpose of this trial.

Mr. Green: That is all we want.

The Court: I don't think it comes within the strict rule. But whenever I see and know a thing is fair,—

Mr. Green: We have not had, I understand, these records in our possession.

The Court: That is the reason, you can take this witness and one of your experts and they can have an expert go right along with him and figure this up, and I will let him come back and state what the maximum and minimum is.

Mr. Green: That will delay us. We were going to have this witness—ask this witness these questions and then put on our experts. We are right up to that point.

The Court: All right, I will let it go in subject to their objection, and unless you verify it, in this manner, I will strike it out, and so that will carry the expert evidence with it. I will do that so as to expedite the matter.

Mr. Green: I think that will expedite the matter.

The Court: Very well.

*By Mr. Green.*

Q. Now, Mr. Slater, I will cover the period of the indict-

ment,—what is the period of the indictment,—well, from April through May? A. Yes, sir.

Q. Now, covering the period, and from this information that came in the manner that you have detailed to the court and the jury, will you give, state to the court and jury what was the *Bohmie* gravity on the unrefined, weathered unrefined naphtha shipped from Jenks to Port Arthur, giving the minimum and the maximum.

Mr. Chambers: We object, as being irrelevant, incompetent and immaterial; and for the further reason, the witness has not qualified himself to testify; and for the further reason, there is nothing under the evidence, shown by the evidence—for the further reason it is not the best evidence.

The Court: Now, with the understanding, for the purpose of expediting this hearing, that the defense will take this witness and an expert and take the books covering these periods and verify that from the records, I will permit him now to do this; but unless that is done, I will strike it out.

Mr. Green: That is satisfactory.

Q. Answer the question. A. From 75 to 85 *Bohme*.

Q. From 75 to 87 *Bohme*? A. Yes, sir.

Q. Will you state what was the vapor tension on this weathered, unrefined naphtha from Jenks to Port Arthur?

Mr. Chambers: I object, as being incompetent, irrelevant and immaterial, for the reason the witness is not qualified, and it is hearsay and not the best evidence.

The Court: I will admit it under the same understanding.

A. From nine to ten pounds.

Q. What is it? A. From nine to ten pounds.

Q. Now, will you state what was the *Bohme* gravity on the blended, unrefined naphtha shipped from Kiefer and Drum-right during that same period?

Mr. Chambers: We object, as being irrelevant, immaterial and incompetent, and not the best evidence, and hearsay, and the witness is not qualified to answer the question.

Mr. Green: I was not conducting that examination, and a good deal, possibly of it is, I don't know whether it is higher or lower.

The Court: You have the record, the records are here and were offered.

Mr. Green: I don't think the records were offered.

Mr. Swacker: Several government witnesses have already testified to that same matter.

The Court: I will let you do it. I will permit it under the same understanding.

Mr. Green: If there is any higher or lower, we are glad to have it.

The Court: I will let it in subject to the same understanding and direction this verification is to be made, and unless it is made, I will strike it out.

Mr. Chambers: And it is necessary for me to object.

The Court: Very well.

Mr. Green: It may be understood that this objection goes to all this testimony; we don't raise that point.

Mr. Chambers: I don't know whether it will make a record or not, unless the court says so.

The Court: Go ahead.

Mr. Green: Answer the question.

A. From 72 Baume to 85 Baume.

Q. Now, that refers to the blended unrefined naphtha from Kiefer and Drumright. Will you state what the vapor tensions on this blended unrefined naphtha shipped from Kiefer and Drumright was during the same period?

Mr. Chambers: We object to the question, for the reason it is incompetent and irrelevant; the witness not qualifying himself to answer the question; the witness shows it is hearsay and not the best evidence; the records of the parties taking the tests would be the best evidence.

The Court: It will be permitted under the same ruling.

A. Seven to ten pounds.

The Court: And with the understanding that counsel for the defense agree to follow this line by verification.

Q. Now, at the Port Arthur refinery in Texas of this defendant, what were your duties, say during the times laid in this indictment, prior to the time you were up here, the times you were at Port Arthur?

Mr. Green: Strike that.

Q. Will you state, prior to the time you came here temporarily with the Gypsy Company, when you were in Port Arthur?

A. From September 1, 1918 until April 15, 1919.

Q. Now, then, what were your duties during that period?

A. Assistant Superintendent.

Mr. Green: As I understand it, your honor, the records covering these shipments down there during the period from September, 1918 to April, 1919 are in evidence. Is that correct.

Mr. Gann: The unloading records and test sheets?

Mr. Green: Yes.

Mr. Gann: Those records are in.

The Court: As to where they are in, he may testify to them. I will overrule the objection.

Q. Now, then, I will ask you from the knowledge which comes to you, in your capacity as Assistant Superintendent of that plant, whether you are able to testify as to the Baume gravity and the vapor tension of these products, unrefined naphtha, the weathered and the blended, during the period that you have indicated? A. I am.

Mr. Chambers: We object to that. It is asking for a conclusion of the witness. The witness has not qualified himself to answer the question. The mere fact he is Assistant Superintendent and says he knows is not sufficient, and it is not the best evidence.

Mr. Green: I will undertake to qualify him further.

The Court: What date does he ask?

Mr. Chambers: September, 1918 to April, 1919.

The Court: Very well. It is conceded that the records are in evidence as to those matters. Let the record show it is conceded that the records are in evidence as to those matters.

Q. You may answer the question.

Mr. Chambers: He still has not qualified him.

The Court: You will have to show he is familiar with those records.

Mr. Green: Your honor, I want to make this point, that this knowledge——

The Court: I know, but when the records are in——

Mr. Green: What I mean, is this; this knowledge may have come——

The Court: I know. I am not going to let him testify to anything because he could commit perjury under that, and when confronted with it, he could say, "I was not testifying to those records."



Mr. Green: I will note my exceptions, and proceed the way the court has indicated. I don't think this will vary the record at all.

The Court: If he is going to testify from his knowledge, and the records here, he ought to testify to what the records are.

Mr. Green: Well, I won't press the matter, but I would like to have an exception.

The Court: Very well. Where were you during this period from September to April?

A. Port Arthur, Texas.

The Court: How did you get this information?

A. From the laboratory tests.

The Court: But when you examined, you went back to the time when you examined before?

A. No.

The Court: You just examined, then, certain days.

A. Yes, sir.

The Court: And that knowledge showed upon certain days, and don't cover all days?

A. Yes, sir.

Q. In saying "certain days" do you mean you had certain specified days, or in the course of business from time to time?

A. Just from time to time I examined the records.

The Court: As to the particular days on which you made the examination?

A. Yes, sir.

The Court: And when you made the examination, you didn't go back over the intermission covering the intervening days from the time of your last examination?

A. No, sir.

Q. Do you mean to say at no time you did not turn back and examine other days? A. No.

Q. I don't understand what you mean by "No"; you mean you did not turn back? A. Did not turn back.

Mr. Green: Your honor, I want my exception to go in.

The Court: He says he don't know. He says, "I know certain days." Certainly, you don't want him to testify to things he don't know.

Mr. Green: I don't want to argue, but I want the court to understand I am sincere in my belief, and, to be consistent, I want to have my exception.

The Court: Very well, you may have your exception.

Q. Now, are you familiar with these records that have been introduced in evidence of these shipments received there?

A. No, sir, I am not.

The Court: Now, the only information you have, is the information that you got when you would make examination on those particular dates? A. Yes, sir.

The Court: Very well, I sustain the objection.

Q. From such information and experience and observation as you have had with this material, are you able to state to the court that this product that has been received down there from time to time is, or is not, constant or fairly constant in its characteristics? A. It is not.

Mr. Chambers: I object. I move to strike the testimony, the answer, as being irrelevant, incompetent and immaterial, and the witness is not qualified to answer the question.

The Court: Why is he not qualified?

Mr. Chambers: He states all he knows is from the records he examined occasionally.

The Court: That is not the question now. They asked him, from his knowledge, whether or not it is constant.

Mr. Chambers: How could he say it is constant? He has not shown that he possessed the information, and how can he state when it is not shown that he had the information to know?

The Court: What?

Mr. Chambers: Let me get the objection in. It is not the best evidence.

The Court: No, you will not put any objection in there. What information have you got? Did you ever treat or handle this?

A. Not personally, no.

The Court: Very well. I will not permit that.

Mr. Green: Will your honor indulge me in one further question?

The Court: Very well.

Q. Are you able to state, from your observation and gen-

eral supervision of this business, are you able to state to the court that you know, independent of any records that may be there, or may not be there, that you know what is, what those figures are,—taking the minimum point and the maximum, give the range with reference, can you state to the jury what these products were answer yes or no?

Mr. Chambers: I object, as being incompetent, irrelevant and immaterial, for the further reason, the witness has not shown he is qualified, and for the further reason, it is asking a conclusion of the witness, and inasmuch as he has not personally had anything to do with inspection, and the only information he has is occasionally glancing at the records.

The Court: I don't think they have shown that he is sufficiently qualified to answer that question. If he treated the article as an expert, and a chemist, and could tell of his own knowledge, I would permit that.

By Mr. Green: Well your honor he did not do that personally because he had men under him to do that.

By the Court: Well now the only way that was that he occasionally examined the records but he didn't examine the records during that particular day. He didn't turn back to the last day he made the examination.

By Mr. Green: Here is our position, this man is an executive and an executive in order to manufacture this product it is our position that the executive is charged and is presumed by the court to know what is going on, and when he testifies he knows and gives a maximum and a minimum and tells the court—we feel that we are entitled to have it go to the jury with the understanding that the records are now in evidence.

By the Court: He has not examined them.

By Mr. Green: No but the records of these shipments are in evidence and he can be crossed on that.

By the Court: No I don't think so.

By Mr. Diggs: If the court please can we leave this branch of the evidence and have the witness examine it and then call him back.

By the Court: That is what I suggested a while ago. He can go and examine those books, they are in evidence. I will permit him to examine those books and the maximum is so and so and the minimum is so and so and I will permit that to go in evidence.

By Mr. Green: The only objection to that it interferes and I know—*alirhgt* I will just except.

By Mr. Chambers: What classes of oil were you inspector of?

By the Court: He didn't inspect any.

A. I was not inspector.

Q. In order it may be clear to the court and counsel state what your duties were during that period?

A. Supervisor as Assistant Supervisor of Manufacture.

By Mr. Green: We will proceed with the understanding that the exceptions go in.

By the Court: Very well I will point out a way you may get this evidence and I will let you proceed so that there may be no delay. If you had others to examine that I will let you introduce your experts on that examination so that if you don't have the hypothetical case at the close I will strike out all of the evidence.

By Mr. Green: I appreciate the remarks of the court but I think we are entitled to show it this way.

By the Court: If you are there is some law that will show me that. I have never yet with all the range of cases found but what there is some authority and if you will just show me—

By Mr. Green: I am not prepared to make that showing this morning because it didn't occur to me. I may be wrong about it and I can't put my hands on the books now so we will just proceed under the ruling of the court.

Q. Now when these products, unrefined naphtha, and blended unrefined naphtha and weather unrefined naphtha reached Port Arthur, state to the court and jury whether there more than one way of manufacturing or refining?

A. I know of two ways possibly, there are more.

Q. Will you state what those two ways are?

By Mr. Chambers: We object to that as incompetent, his question is to how many ways there are.

By the Court: If he knows two ways—there is no use of making these captious objections, there may be twenty ways and he only knows two.

By Mr. Chambers: But don't ask what ways were actually used in the manufacture.

By the Court: If you know of two ways used in that plant you can testify.

By Mr. Green: Your honor that was not my ques-

tion, I asked whether there was one or more ways that could be used.

By Mr. Chambers: That is what I was objecting to.

By the Court: Could be used?

By Mr. Green: Yes, if he knew there was two ways he might choose to use both of them and might choose to use only one of them.

By Mr. Chambers: My objection is it is incompetent what ways could be use- and not how many were used on this particular product. There might be 20 ways.

By the Court: Do you know how that product was treated?

A. I do.

By the Court: He can answer that.

By Mr. Green: Your honor does not quite get my point and I believe if your honor will let me ask these questions he can readily see what I am getting at. Although there may be two ways he is not required to use two ways and I want show what the two ways are. This man is an expert manufacturer.

By the Court: You must first lay the predicate and show how it was treated.

By Mr. Green: Your honor you don't get my point, when he is confronted there with handling this product with two possible methods in his opinion that he could use.

By the Court: Well you show first how he treated it and by what method it was and then you could show what other method.

By Mr. Green: He didn't necessary have to use them both.

By the Court: No, you must first lay your predicate.

By Mr. Green: If the Court will *list* just a minute—

By Mr. Diggs: Our purpose is to prove the method and then ask him which one of the methods superseded.

By Mr. Green: I propose to run the two methods out and show to the court and jury what our contention is.

By Mr. Diggs: In other words we propose to show there are two methods to do this and then to show one is the established method that was used in the plant.

By the Court: With that statement I will permit it.

By Mr. Green: And further to show—

By the Court: I will strike it out if you don't follow it up.

By Mr. Green: Alright.

Q. Now state what two methods the two principal methods used.

By the Court: No, the two approved methods.

By Mr. Green: I did not want to use that, but if the court suggests it I will gladly do so.

By Mr. Chambers: I object, incompetent, and irrelevant and immaterial and the witness has not been qualified to answer.

By the Court: Why?

By Mr. Chambers: He has not shown he knows the approved methods.

By the Court: He is a graduate chemist.

By Mr. Green: When?

A. 1907.

By Mr. Green: Where?

A. Pennsylvania State College.

By the Court: He is a graduate chemist. Objection is overruled.

A. Industrial chemistry.

Q. Specialize in that? A. Yes, sir.

By the Court: Go ahead.

Q. Now what are the two ways?

A. By blending and by distillation.

Q. Now we will take the blending methods when they arrived there?

By the Court: You can ask him what process he refined it.

By Mr. Green: That is my question.

Q. By what process did you use to manufacture or refine it, using the words *synomously*.

By the Court: Do you mean the products shipped to these points?—shipped to Jenks and Drumright?

By Mr. Green: Yes, sir, the record shows I asked him that.

Q. Describe to the court the blending methods in so far as applied to the product commencing at the time the cars arrived in going through the method, put it in terms the court and jury and lawyers can understand?

A. When the cars were received at the refinery, they are first unloaded, in order to do that, it is necessary to raise the safety valve and allow any of the enclosed gas to escape, the dome cap is then removed and the outage then taken on the cars to determine the loss in transit. The temperature is taken at the same time. A sample boy from the laboratory comes and takes the samples of the car and takes the sample to the laboratory for further test. By this test is determined the method by which this car is to be handled, usually it shows impurities——

By the Court: I will not permit him to testify to that unless he knows of his own knowledge as to what these cars showed.

By Mr. Green: I am not asking him to testify to anything he does not know of his own knowledge.

By Mr. Chambers: His testimony shows he did not if the court pleases.

By Mr. Green: Your honor I am trying to stress that point. If the test showed impurities then what is done?

A. If the test shows impurities we know then into which tank to pump the material.

Q. Well what is done after these tests are taken, what is physically done with the cars, how are they handled?

A. They are unloaded.

Q. Well but prior to unloading, preparatory to unloading?

A. You mean to discharge the cars?

Q. Yes, this—is it or not dangerous?

A. The car is first cooled before unloading.

Q. Why? Explain to the court how that is done.

A. When the cars come in under hot weather they are put under a water spray in order to lower the temperature as much as possible to get the vapor tension as low as possible to do away with the maximum amount of loss.

Q. Explain to the court and jury how that would tend to reduce the loss?

A. The lower the temperature this can be handled, the less the loss.

Q. Is it not a fact——

By the Court: You mean it would be loss by evaporation? A. Yes.

Q. And is it not a fact that every time this commodity is handled whether in loading or unloading cars or pumping or disturbed in any way there is a waste or loss? A. Yes, sir.

Q. Explain that?



A. We can handle no material from our cars to tanks or from tanks to tank by a pump without loss.

By the Court: By evaporation?

A. By evaporation and leakage.

By the Court: The leakage depends mostly on the character of the vessels, the vessels and the pump valves and there is ce——

A. And there is a certain amount from the tank from which you wish to pump.

By the Court: Those are incidental, those are waste, incident with the handling?

A. Yes, sir.

Q. State to the court whether or not it is desirable—I will withdraw that question—what is your purpose of putting these cars under the sprays?

A. In order to lower the vapor pressure by cooling.

Q. That is the affect but what is your object in it?

A. To save the material.

Q. Now then you have the cars over there what time of day do you usually unload them?

A. We prefer to unload them early in the morning.

Q. Why?

A. Because the temperature is lowest at that time.

By the Court: Now that is the best time to unload them?

A. Yes, sir.

By the Court: Why?

A. Because it would not be practicable to unload them at night on account of labor.

By Mr. Green: I think—the witness stated early in the morning because it was cooler then.

By the Court: It would be cool at night and I assume they would not want to do it at night because labor is as not as available at night.

A. No, your honor because the cars absorb the heat of the day and it takes quite a while to cool them.

By the Court: You give them the benefit of the night to cool and then unload them early in the morning. You take into consideration all those things, the natural temperature to reduce the temperature of the tank car in transit.

Q. Now then resume from there and continue? Tell the court what you do?

A. The car is connected to a pumping out line. There is a pump situated very closely to the cars so that the material from the cars can flow into the suction pump. It [ ] then pumped into a tank. One of two or three tanks. There may be other materials, some unrefined naphtha, some heavy naphtha and some gasoline and tests are taken from the tanks from time to time to determine in what manner we can bring this tank up to certain specifications.

Q. You say tests are taken, how are those tests *tank*?

A. A boy comes from the laboratory and takes the sample, takes it to the laboratory, gravity, and distillation tests and other tests taken to determine whether it will meet any given specifications for gasoline.

Q. When you have the result of that test, what do you do?

A. We know whether we can use this material to blend with some heavier material to bring it to a desired specification or we can put in some other material into that received and bring it up to a desired specification.

Q. Well knowing that do you not proceed to blend?

A. We do.

Q. Then what do you do? Explain how you blend it?

A. By pumping different materials into a tank and into it air or we may pump with two pumps into a tank and depend upon mixing of their own accord.

Q. Now you have done that do you not take further tests?

A. We test the material.

Q. For what purpose?

A. To determine all through the operation if it has reached a state of refinement to meet our specification.

Q. All through the operation? A. Yes, sir.

Q. And those tests and those samples that are taken are tested by your laboratory? A. They are.

Q. Now I will ask you—I will strike that—he has already answered it. Now without asking you whether you do it in the handling, do you in handling this material, I will ask you is the fact of this, assuming that you intend a purpose to refine this product by putting it through steam still, explain to the court and jury how you would proceed.

A. The material is charged into the distillation unit consisting of steam stills and condensers and heat is applied to the stills through the agency of steam and the distillation proceeds the lower boiling point comes over first and the higher boiling point over last; the first material recovered is not available for the manufacture of any gasoline except through blending and the second material either left in the still or recovered by distillation would pass perhaps some of our specifications and could be used as gasoline, however, in carrying

on this distillation we would experience about forty per cent loss of this material, twenty per cent additional would require blending and we would have a recovery of about twenty per cent.

Q. Now I will ask you as a refiner in charge of your plant, or that plant, seeking to handle this product in the most profitable and economical way, which of those two methods would you choose? A. Blending.

Q. Why, explain to the court and jury?

A. Because of the much lower cost of operation and because of less loss. We would lose in blending about five per cent and in distillation about forty per cent.

Q. I will ask you whether in your time or within—I will change the question because it might convey the wrong impression to the court. During your time as assistant superintendent in charge of the supervision of this refining and handling these products from Kiefer, Drumright and Jenks was any of it unrefined naphtha ever sold as gasoline? A. It has not.

Q. One further question, in handling this unrefined naphtha, do you ever follow the distillation process or have you in any instance? A. We have.

Q. When do you do that and why do you do it?

A. Only because we are in very straightened circumstances for some certain material.

Q. Well I will ask you this, suppose you were to get a car that were badly off color?

A. We would put that through the steam stills.

Q. With the result however, that you would sustain the heavy loss? A. Yes.

Q. I will ask you whether or not blending in a refinery extends to other products than gasoline?

A. Practically every product from a refinery.

Q. In bringing it—

A. To required specifications, either kerosene, fuel oils, lubricating oil, Solar oils, practically every other material.

Q. I will ask you whether or not it is common practice, in making most, if not all, of the refined articles, to bring them to their refined state by blending?

A. I do not think it would be possible to run a refinery without blending.

Q. I will ask you, then, as an expert, is, or is not, blending an important and intricate part of refining? A. It is.

Q. Have you or not stood and watched tests, laboratory tests of this unrefined naphtha made at Port Arthur?

A. I have.

Q. Now, I am going to ask this question, and don't answer it until the court has had an opportunity to rule on it.

Those tests that you have stood and watched made, are you able to give the court the physical characteristics, using for the purpose of this examination maximum and minimum?

Mr. Chambers: We object, as immaterial and incompetent.

The Court: I will permit him to testify how many tests he has seen made.

Mr. Green: And over what period of time.

The Court: No, how many tests, of his own knowledge, he has seen made.

Mr. Chambers: Limiting it to the product in the indictment.

The Court: Yes, how many tests you have seen made, how many times. If you have seen it a dozen times. That is a physical fact.

Mr. Chambers: I will ask you to qualify him as to the product named in the indictment.

Q. When I refer to the tests you have seen made, I refer to the test of this unrefined naphtha, brought in order that you may get at, the weathered, unrefined naphtha from Jenks, and the unrefined naphtha from Kiefer and Drumright, a blended article?

The Court: How many personal tests, how many tests would you say that you have seen made personally?

A. Pretty hard for me to say; covering a number of years.

The Court: Have you seen as many as a dozen?

A. Yes, sir.

The Court: Fifteen?

A. Yes, sir.

The Court: Twenty?

Q. Can't you state to the court your best recollection on how many you have seen?

The Court: How many years have you been there?

A. From September first until April 15th.

The Court: That would be eight months, during that time, in your recollection how many during a month?

A. In that eight months I would say a dozen times.

The Court: I will permit him to state he probably has seen it a dozen times in eight months, and then I will let you ask him if the tests varied, and if he knows of his own knowledge, he can state the variations, the high and the lowest point.

A. Judge, which test do you refer to?

The Court: You say you have seen about a dozen. I am talking about the twelve tests you say you saw.

Mr. Green: I want him to answer the question as to the weathered product from Jenks, and the other the blended product.

The Court: Of those tests, how many did you see from Jenks?

A. I could not say how many out of the twelve.

Q. How many out of the twelve from Drumright?

A. I could not say.

The Court: How many out of the twelve could you say you saw from Kiefer?

A. I could not say.

The Court: That seems to me to be too indefinite.

Mr. Green: I will not press it, but I would like to have an exception,—

The Court: I will let him answer it, but it is not definite enough to base a hypothetical question on.

Mr. Green: I don't like to press the matter, but if the court will permit him to answer, I think it is pertinent.

The Court: Well, do you know whether or not any of that particular twelve was from Jenks?

A. I do.

The Court: How many?

A. I know particularly, one.

The Court: Just one?

A. Yes, sir.

The Court: I will permit him to answer as to that particular one he saw from Jenks.

Q. Well, state what that—I will ask you first, what the Baume gravity was.

A. I can't give you, definitely, the Baume gravity on that one.

Q. Tell what the tests showed.

A. That the recovery on distillation was over ten per cent, about seventeen per cent loss in distillation, where it should not show more than two and one-half per cent. That is one idea that is in my mind when you run a distillation test—

Mr. Green: Just a moment.

The Court: That is your recollection as to that?

A. Yes, sir.

The Court: Have you any other recollection as to that test, other than that?

A. The gravity was taken, but I do not remember what the gravity was on that particular test.

The Court: Very well.

Q. Now, can you give the court the result of the tests on the blended—

The Court: Let me see. Do you remember any tests that you saw made from the commodity that was shipped from Kiefer?

A. One test that I remember.

The Court: Ask him specifically as to that.

A. The one time I have in mind on that test was that the recovery was greater than it is on unblended material.

The Court: How much was the recovery?

A. The recovery will vary—

The Court: How much did the recovery vary? What was the recovery on that one instance?

A. The recovery was about 88 per cent.

Q. Did you see—do you recall or do you remember now any test with reference to Drumright?

A. I do not know as to Drumright.

Mr. Green: Take the witness.

*Cross Examination by Mr. Payne.*

Q. Mr. Slater, you stated that upon arrival of the cars at Port Arthur, a test was made to determine which tank it would go into, and that it was determined as to whether it had impurities in it or not?

A. The tests are to determine whether it had impurities in it or not.

Q. Could you state the number of the tank it would be pumped into if it did have impurities in it? A. I cannot.

Q. Can you state the number of the tank if it did not have impurities in it? A. I can not.

The Court: Now, if it had impurities, it was pumped into one tank, and if it did not have impurities, it was pumped into another tank?

A. Yes, sir.

Q. That stuff that had impurities in it, what treatment did you give that?

A. Some of the material was treated and some steam stilled.

The Court: How did you determine now? You say some of the stuff that had impurities was blended and some steam stilled?

A. Yes, sir.

Q. Now, what brought about the determination, as to whether or not it would be steam stilled or blended?

A. The color was the principal thing that determined steam still; the amount you might say crude oil enclosed with the unrefined naphtha, the material that came from these plants. Usually we call it drip material.

The Court: Go ahead.

*By Mr. Payne.*

Q. I understood you to say you made an examination to determine whether the fluid had impurities, if it did have impurities, it was pumped into one tank and redistilled; if it did not have impurities, it was pumped into another tank for blending, is that correct?

A. I would have to look at my testimony to see.

The Court: What do you say now?

A. I say now the material arrived, it depends on the degree of impurities of the material received. If we think we can work it off without steam stilling, we do so, to avoid the loss.

Q. What is tank 829 used for? A. I could not say.

Q. What is tank 805 used for?

A. I could not say, usually used, I could not say positively, usually used as gasoline tank.

Q. Do you know whether any of this liquid from Port Arthur was pumped into tank 805? A. I could not say.

The Court: You say liquids from Port Arthur?

Mr. Payne: Liquids from Kiefer and Oklahoma, I meant to say.

A. The pump records will show that.

The Court: Suppose, I want to learn something about this while this is going on—suppose the tank comes in, the color was what you would call water white; what tank would you pump it into?

A. I could not say. That is a record for the pumpers.

The Court: What is the character of the pumping of that? What would that ordinarily be called?

A. The correct name is unrefined naphtha.

The Court: What do you call it?

A. We call it usually Kiefer gas.



The Court: What did you put it on the books as?

A. Should have been put on as unrefined gas, but I don't know what it was put on as.

The Court: You don't know?

A. No, sir, we considered the material available for gasoline.

The Court: What is that? You consider what?

A. We consider the material available for gasoline.

The Court: Go ahead.

Q. Now, as a matter of fact, Mr. Slater, have you any unrefined naphtha tanks in your plant?

A. We use our tanks for any purpose we may require.

Q. Have you any tanks in the plant which you designate as an unrefined naphtha tank?

A. No, we have not.

Q. Have you any tank in the plant you designate as crude naphtha tank? A. Nothing but a running tank.

Q. Will you explain the difference between crude naphtha and unrefined naphtha?

A. Crude naphtha is usually the first cut from the distillation of crude oil. Unrefined naphtha is the unstable product manufactured by compression and coming from casinghead gas, from gas wells and from separating tanks and weathered.

The Court: Now, let me ask a question. What would you call the process over here at Kiefer? I believe you are familiar with the process there, where they blended this containing product, or naphtha, whatever you call it, coming from Port Arthur?

A. Heavy naphtha.

The Court: To blend at Kiefer, and you blend that with the casinghead gas, or whatever you call it?

A. Condensate.

The Court: What would you call that process?

A. That was one step in refining.

The Court: That would be a process of refining?

A. I consider it one step in refining, not complete refining, but one step in refining.

The Court: Well, now the next step would be to reduce it to specifications for commercial gasoline?

A. No, the next step would be to reduce the vapor pressure required by the ruling of the Interstate Commerce Commission for transportation, which is the main purpose in blending at the plant here.

The Court: Now, suppose that when you blended it at Kiefer, it was of the white water color, and it would meet the specifications of the commercial gasoline, what would you call it then?

A. We would call it gasoline, but it can not be made to meet the specifications, except by blending a very large amount of material with it, and, in my opinion, there should not be over ten or twelve per cent of this material—

The Court: I am asking you, would you know the effect, would it be possible to ship that heavy naphtha and combine it with this casinghead gas product, would not it be practical from the combination to blend it?

A. It would not be practical.

The Court: But would it be possible to bring about a result that would meet the specifications of a commercial gasoline?

A. Not with the heavy naphtha which he shipped there.

The Court: Wouldn't it be—

A. It would be possible with certain grades of heavy naphtha, but I do not think it would be possible with that naphtha shipped here.

The Court: Here is the point, and I don't want the jury to attach any special significance to these questions. I am just trying to get in my mind. These questions I ask, the jury are not to treat them as any more specially significance than questions asked by counsel. Now, which would be more specific, in calling that product, an unfinished naphtha, or unrefined naphtha?

A. I would call it unfinished; in my mind, that is the better word.

Q. What is the nature of the material that you use at Port Arthur and blend with the liquid from Kiefer and other casinghead plants in Oklahoma?

A. We use something of everything, naphtha, painters' naphtha distillate, and use painters' naphtha and what we call cracked gasoline, but all of that is blended with a large amount of natural gasoline.

Q. That is the same stuff you ship north to Kiefer for blending?

A. No, sir, only painters' naphtha distillate and painters' naphtha, and cracked naphtha, but a large amount is straight run gasoline.

Q. Is it not a fact, in many instances you would ship painters' naphtha out of a certain tank, number 838, to Kief-

er, and on the same day you would use that same painters' naphtha in the same tank for blending at Port Arthur?

A. It may be possible, yes, sir.

Q. Don't you know it to be a fact?

A. No, sir; it is probable, however.

Q. Now, what is the purpose of sending this stuff down to Port Arthur? Is it for the purpose of bringing up this low stuff down there?

A. No; for the purpose of marketing the largest amount of gasoline.

Q. What is the process for the off color stuff put through?

A. If it is badly off color, it is put through a distillation process.

Q. Distilling process?

A. Yes, sir, mixed through crude naphtha with the refinery.

Q. And the stuff not off color? A. Blended.

Q. Or mixed with the other products, did you do anything else besides blend it or mix it? A. In all this material?

Q. In other words, is it not a fact that you have a tank there which you designate as gasoline tank, and is it not a fact that the stuff from Kiefer is brought down, and when it is not off color, it is pumped into that tank?

A. Maybe; I could not say.

Q. And is it not a fact, that stuff is frequently shipped out on the same day as gasoline?

A. We like to ship it out on the same day we received it, to avoid loss; but the greater length of time we keep it, the greater the loss.

Q. Is it not possible that you did that?

A. Wherever it was possible—

Q. If we had two buckets right here wouldn't it be possible for us to pour them together and mix them?

A. If you knew how, yes.

By Mr. Payne: That is all.

By the Court: Anything further on redirect examination?

By Mr. Green: Just one or two questions, your honor.

*Redirect Examination by Mr. Green.*

Q. You stated on cross examination you used the expression "available for gasoline," will you explain to the court and jury what you mean by that?

A. We have certain stocks at the refinery which are usable to make gasoline by different methods of refining.

Q. Then when you use the expression, available for gasoline, what do you mean?

A. I meant that it was available as a crude material.

Q. For what purpose?

A. For the manufacture of gasoline.

Q. I will ask you whether or not in the blending of this material at Port Arthur you confined your operations, you confined yourself to the materials that you used in blending at Kiefer, Drumright and Jenks, I mean to the heavy naphtha there? A. Will you repeat the question?

(Question read by the reporter.)

A. We do not.

Q. Now can you give the court and jury, can you state to the court and jury what percentage of this unrefined naphtha as shipped from Kiefer, Drumright, and Jenks is contained in the finished article, of gasoline as finally produced by your blending process, answer that yes or no? A. Yes.

Q. Will you please state?

A. From the different fields at present there is about 1800 barrels daily—

Q. No, no, you must misunderstand me, I am asking for percentages, I will restate the question. What percentage of unrefined naphtha that you receive from Kiefer, Drumright and Jenks is contained in the finished product gasoline that you produced at your plant at Port Arthur by blending?

A. It will vary—

By the Court: You mean what proportion?

By Mr. Green: Yes, what proportion.

A. From five to twelve and a half per cent.

Q. Five to twelve and one-half per cent of unrefined naphtha, what other article or articles do you use in the blending besides the unrefined naphtha and the heavy naphtha?

A. The compression gasoline recovered from distillation of crude oil in the steam stills.

Q. That is still run gasoline?

A. That is still run gasoline recovered by an auxiliary dispenser.

Q. Can you give the court the proportions of the various ingredients that go to make up the finished product that you call gasoline then, for commercial use? Are you able or not to do that? A. No, I am not able to do that.

Q. Without being mathematically accurate can you tell the court approximately the proportions that you find?

A. No, because practically every case varies.

Q. You have stated however that the portion of the unfinished unrefined naphtha that enters into that?

A. Yes, from five to twelve and a half per cent.

35. [Q.] What is the reason for bringing this product to Port Arthur, why did you bring it down to Port Arthur?

A. In order to market it.

Q. Can you market it in the state it is in up here?

A. No, sir.

Q. Why do you bring it to Port Arthur?

A. To blend off with other material.

Q. Explain to the court why you cannot blend it up here.

A. Because it will not pass the specifications for gasoline.

Q. Explain why you cannot blend it?

A. It would not pay us to ship enough blending material here in order to blend it off, this is a smaller amount and it is better to ship the smaller amount to the larger amount.

Q. And by blending it you include the heavy product, other than naphtha when you say you blend the material, do you refer to the still run gasoline? A. I do.

Q. Do you or not have that here at Jenks? A. We do not.

Q. Drumright and Kiefer? A. No, sir.

Q. Counsel on cross examination asked you if you did not ship right out of the same tank on the same day, I will ask if you ever put this unrefined naphtha into a tank and then shipped it out without having put it through a blending process and without having put it through a steam still in the manner which you described to the court and jury.

A. We have never put it without blending.

Q. Explain to the jury how it is blended when it is sent out the same day?

A. It is blended with a heavy material or material which will bring it up to the specifications, either in tanks or by agitation in pipe lines or by pumping or by settling or standing in tanks.

Q. I will ask you whether or not it is possible, I will ask you whether or not you have ever on occasion blended that in hulls of your vessels? A. I believe it has been.

Q. I will ask you whether those vessels are equipped for blending?

A. We can blend in the tanks of a vessel as well as the tanks on shore, simply a motion process and the motion of the boat will properly mix the commodities but a sample has to be taken and the material in the tanks must pass specifications before the shipment is approved.

Q. Before the boat leaves?

A. The boat can't leave until the shipment is approved.

Q. I will ask you in your opinion as an expert whether or not proper blending is a skillful or unskillful art in refin-

ing, I will ask you whether or not you can answer that question? A. I can.

Q. Now, then, I will ask you to answer the question?

A. Blending is an operation carried on under skillful men, under the direction of skillful men.

Q. I will ask you the further question whether or not proper blending requires years of practical experience in a refinery? A. It certainly does.

Q. I will ask you whether or not as compared with making gasoline by the distillation process whether or not blending does or does not require more skill than the distillation if you know?

By the Court: You mean by blending process that it requires more skill than by distillation.

By Mr. Green: To do it accurately and properly, yes.

A. Well—

By the Court: If he knows.

Q. Do you know?

A. I will have to answer that in an undirect method. I think a man in charge of a blending plant will utilize more material than a man simply knows how to run a distillation plant. The machinery plant will use more than the blending process.

The Court: Now, the skilled man, the knowledge of blending.

A. Is gained from experience.

The Court: Is gained from experience, and the accuracy depends on how much economies there is in it?

A. Yes, sir, and the laboratory test.

The Court: So the experience, the amount of experience relates more as to the amount of economy in the loss of the material in blending?

A. Yes, sir.

The Court: Go ahead.

Q. I will ask if the amount of the loss is a matter which the refineries take into consideration seriously in their operations? A. Very seriously.

Q. Now, I will ask you the further question, whether or not the product from Kiefer, Drumright and Jenks that you do put through the stills, whether or not, in order to utilize that material, even though it is put through the stills, it is necessary to blend? A. A portion of it, yes, sir.

Q. I will ask you this further question, whether or not

it is possible, in this day and time, to run a refinery without using the process of blending in bringing the materials to the various refined articles?

A. If it is possible, I do not know it.

Q. Well, answer the question; you are an expert?

A. 13 years, but I never heard of it being done.

Q. I will ask you whether or not a refinery did not do those things—that did not do those things, could run in a way where they would not, as we ordinarily say, go broke from losses? A. No, I do not think so.

The Court: Would not be an efficient administration?

A. No, sir.

The Court: Any further questions?

Mr. Green: I think that is all.

*Further Cross Examination by Mr. Payne.*

Q. Mr. Slater, will you state what scientific books on casinghead gasoline you have read?

A. I cannot give most of them, I have read some by Mr. Burrill and Seibert, and Westcott's handbook on casinghead gasoline, and those are the principal ones.

Q. In any of those books is the term unrefined naphtha used as applied to the product of a compression gasoline plant?

A. I don't know; I have never seen it.

Q. You have never seen it? A. No, sir.

The Court: And you say you have read those books?

A. Yes, sir, may be there, but I could not recall it.

Q. What do they call the product?

A. In some cases it is called gasoline, some cases casinghead gasoline, and I believe in some casinghead naphtha and called naphtha.

Q. State where you saw it called casinghead naphtha.

Mr. Green: I want him to finish the answer.

The Court: We will take a recess. Those are standard books. You may have them and show the witness the book. He is entitled to have them to refer to. He states it may be there and not recall it, and that may be true.

Mr. Swacker: May I suggest that they did not allow this witness to testify as an expert on casinghead gasoline and now they ask him——

The Court: You went into it. This contemplates the blending with the casinghead product. I will permit him to do that.



We will take a recess now until 1:45, and, gentlemen of the jury, you are instructed that you are permitted to separate, under the usual instructions and precautions.

All right, let the jury pass out. The spectators will keep their seats.

Whereupon, court took a recess until 1:45 P. M. of the same day.

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AFTERNOON SESSION, 1:45 P. M.

(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and present, same parties as heretofore, the jury having been called by the clerk, and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed, the following proceedings were had, to-wit:)

WILLIAM A. SLATER, recalled for further cross examination.

*Recross Examination by Mr. Payne.*

Q. Mr. Slater, are these the works that you refer to in your testimony this morning? (handing witness books)

A. Yes, sir.

Q. State what they are please?

A. This is a bulletin from the Department of Interior, Bureau of Mines, written for the general information of the public.

Q. By whom? A. By Burrell, Stibert, and Ogerthell.

Q. What is the other?

A. The other is the hand book on casinghead by Westcott.

Q. I will not ask you to state whether those works use the term unrefined naphtha in the connection with the compression of casinghead gas? A. Not that I know of.

Q. Have you ever read Dykema on recovery of gasoline from casinghead gas?

A. I have looked through it but I have never read it.

Q. You spoke of the product shipped southbound from Oklahoma by the Gypsy Oil Company as not being marketable. Just what is there about it that renders it unmarketable?

A. Some of the material is bad in color. Most of the materials contain too large a percentage of low boiling point hydro carbons.

Q. Now, is it or [ ] it not a fact that a great deal of similar liquid is marketed as gasoline. A. I do not know.

By Mr. Payne: That is all.

(Witness dismissed)

Thereupon, S. G. SANDERSON, produced and sworn and examined as a witness, for and on behalf of the defendant, testified as follows:

*Direct Examination by Mr. Swacker.*

Q. State your name? A. S. G. Sanderson.

Q. Where do you reside? A. Tulsa.

Q. What is your occupation?

A. General superintendent of the Gypsy Oil Company, gasoline department, and the Gulf Refining Company, gasoline department.

Q. How long have you been such general superintendent?

A. Since August 1, 1919.

Q. Since August 1, 1919? A. Yes, sir.

Q. Did you succeed W. P. Donovan on his death?

A. No, sir, Mr. Slater did.

Q. Mr. Slater succeeded him temporarily and you succeeded Mr. Slater? A. Yes, sir.

Q. You refer to the Gulf Gasoline Department, where?

A. At Louisiana, Texas.

Q. How long have you been engaged in the casinghead industry? A. Since September, 1913.

Q. Was that very shortly after the plant was established at Kiefer?

A. That is the main plant in construction at that time.

Q. And how long did you remain connected with that Kiefer plant?

A. Remained there until September, 1916.

Q. And then what did you do?

A. Went to Cleveland, Oklahoma.

Q. Went to Cleveland. What is there at Cleveland?

A. Casinghead gasoline plant there.

Q. Of the Gypsy Oil Company also? A. Yes, sir.

Q. What did you do there?

A. Looked after the material and helped with the construction of that plant.

Q. What did you do after that?

A. February 15, 1917, went to Naborton, Louisiana.

Q. What did you do there?

A. Looked after the construction work of the Gulf Refining Company gasoline department.

Q. And came back here, as you said, after Mr. Donovan's death?

A. I came here August 1st, 1919.

Q. Now, what did you do at Kiefer during the three years you were there?

A. I was day man, I looked after the loading and general work, anything that was to be done, in the way of labor, or any such work at all.

Q. Did you have occasion to test the material shipped to Port Arthur from there?

A. Yes, sir; that is, I made gravity tests and vapor tension tests.

Q. How many such tests did you make?

A. Oh, I made thousands of them, I guess.

Q. Can you state from memory, without regard to records, as a matter of knowledge, what the range, first vapor tension, and second, Baume' gravity, of the materials so shipped from Kiefer to Port Arthur was?

A. The vapor tension test would run from seven to ten pounds; that is—not of the drip but from the casinghead plant.

Q. That would be the blended material, consisting of what percentage of naphtha and what per cent of the casinghead?

A. Yes, sir, about thirty per cent crude naphtha and seventy per cent casinghead.

Q. And what would the gravity of the blended article run?

A. Vary from sixty-six Baume' gravity to eighty Baume' gravity.

Q. Would sixty-six be an extraordinary low gravity, an unusual one, I mean? A. Yes, sir.

Q. What would be the typical range of it?

A. An average, I should say, would be from seventy-two to seventy-four.

Q. Seventy-two to seventy-four. Now, has the condition, manner of blending and the character of material continued down to the time that you took charge of the plant again after Mr. Donovan's death, not down to the present time, but down to the time you took charge of the plant?

A. Why, it would be practically the same, as far as I know.

Q. Have you made vapor tension tests at any time on unblended material such as was shipped from Jenks?

A. No, sir, not from the State of Oklahoma.

Q. You have not made vapor tension tests on that in the State of Oklahoma? A. No, sir.

Q. What is your qualifications, you have taken them on shipments from Louisiana? A. Yes, sir.

Q. It is the same general character of the casinghead?

A. It is made from casinghead gas, as to the character or constituency, I could not say.

Q. Its chemical composition, you don't know?

A. I don't know anything about that.

Q. But it is a hydro carbon compound?

A. Condensate from casinghead gas.

Q. Have you taken gravity tests on the unblended material? A. Yes, sir, I have.

Q. What would the range of gravity be on the unblended material?

By Mr. Payne: I object unless it was from Jenks.

Q. I asked you if you had taken the gravity test from Jenks? A. No, sir.

Q. Did not take the gravity tests from Jenks material?

A. No, sir.

Q. Have you taken the gravity on casinghead at Kiefer before blending? A. No, sir.

Q. Now, did you Mr. Sanderson, make and obtain and furnish Dr. Burrell and Dr. Garner and Dr. Shock and Dr. Bacon with samples of this material, both blended and unblended from Kiefer for experimental purposes? A. Yes, sir.

Q. And it was the same character of material as was previously shipped? A. Yes, sir.

By the Court: When did you do this?

By Mr. Swacker: Since this trial started.

A. Thursday, I believe it was.

Q. Did you furnish him some samples which were samples taken previously in the *regual* course of business for distillation?

A. Yes, sir, that was samples from shipments taken from Drumright, Oklahoma.

Q. What has been the practice with regard to keeping samples of the material.

A. Well, the practice was when I was at Kiefer to keep them until the cars arrived at Port Arthur, or if we needed sample bottles, rather, we kept to that time, if we didn't need sample bottles but they were always kept until the car arrived at Port Arthur.

Q. So you furnished these samples taken in the regular course to the gentlemen I have mentioned? A. Yes, sir.

By the Court: You mean some of the sample bottles that covered the shipment of cars, covered in this indictment?

A. No, sir, in November and December, 1919.

Q. How long would such samples be held in ordinary course?

A. Well, as I say, until the car arrived at Port Arthur and after that if we didn't need these sample bottles.

Q. You wouldn't at this time now since this trial started have any samples running back as far as a year ago, would you? A. No, sir.

By Mr. Swacker: That is all.

By Mr. Payne: No cross examination.

(Witness dismissed)

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Thereupon, GEORGE H. TABER, produced, sworn and examined as a witness for and on behalf of the defendant, testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Mr. Taber, will you please state your full name and residence?

A. George H. Taber, Pittsburgh, Pennsylvania.

Q. What is your business, Mr. Taber?

A. Petroleum refiner.

Q. You are connected with the Gulf Refining Company, are you? A. I am.

Q. In what capacity? A. Vice president.

Q. And what have to do as such vice president of the company with respect to the refineries?

A. I have full charge of all manufacturing of any kind.

Q. Now, will you please state your experience as a refiner of petroleum and its products and casinghead condensate?

A. I started in the petroleum business on April 1st, 1882, with the Queens County Oil Works at Long Island City, New York in charge of the office, there, about six months and was made assistant superintendent. I remained there about three years and the latter part of the time I was also superintendent of a neighboring plant, called the New York Refining Company. The name afterwards was changed to Thompson and Bedford. They were manufacturers of grease and lubricants, the Queens County Oil Works were manufacturers of paraffin oil and wax.

Q. Then what did you do?

A. On leaving the Queens County Oil Works in November, 1885, I entered the employment of the Eclipse Lubricating Oil Company at Franklin, Pennsylvania.

Q. In charge of the manufacture of what?

A. Paraffine oil and wax.

Q. And how long did you stay there, and what did you do there?

A. Well, I was shortly afterwards made assistant superintendent and then general superintendent. I remained there until December 31, 1891, a period of over six years, and then I went with the Atlantic Refining Company of Philadelphia, in charge of the lubricating business. I built the lubricating works there in which I introduced original features since adopted in the business, and ran the plant. While I was still there, I was made general superintendent of the Lubricating and Paraffine Department of the company.

Q. And what did you do then?

A. I left there in September, 1903, after an employment of twelve years, and went with the Gulf Refining Company as general manager, in charge, among other things, of all manufacturing, and in the last two or three years I was made vice-president of the company, with practically the same duties which I still discharge.

Q. What experience and connection with the Gulf Refining Company did you have with respect to the construction and operation of gasoline plants, and also with the Gypsy Oil Company, if any.

A. Well, I started the Gypsy Oil Gasoline plant at Kiefer; I had charge of the construction of it and the running of it from the beginning, and still have that charge.

Q. You have had supervision during the entire period of time since its construction?

A. From the time the plans were started, to the present time.

Q. Is that true of all the gasoline plants of the Gypsy Oil Company? A. That is true.

Q. What has been your particular duty with respect to the refining end of the Gulf Refining Company?

A. I have simply been responsible for the result and have had full control and charge of it.

Q. Now, during your experience, how long a period of time did your experience cover?

A. Thirty-eight years the first of this month.

Q. Have you had occasion, during that time, to study the nomenclature of the industry?

A. I gave particular attention to that study from the beginning; that interested me more than any other part of the business.

Q. What did you do?

A. At the beginning of the Queens County plant, I made yield and cost statements and prepared reports covering it, and at that time I viewed the nomenclature used in the work, so as to prevent misunderstanding on the part of anybody in regard to what was designated.

Q. Where did you get your knowledge concerning the proper terminology to apply?

A. Most of it originated with me, and I also talked with people interested in the business, read everything I found on the subject, and pursued it with my other occupation, and with every company I have been connected with. I have rearranged the nomenclature of the oils and given new names to the old oils and names to new oils.

Q. What do you mean by new oils?

A. There were new articles that were manufactured, oils that had not been previously made, had no name in the business.

Q. Has there been an evolution of the business during the 38 years during the course of which new articles were manufactured all together from oil?

A. There certainly have and some of them I originated.

Q. What have you studied in the way of literature on the subject?

A. Always from the beginning, read with eagerness anything I could find on the subject.

Q. What is there of such a character you could read and did read of this description?

A. The first book I remember, Allens Organic Analysis, volume 2, which was the best treatise at that time, the next thing that was S. F. Peckham's reports connected with the census of 1880, issued in 1885, by the Department of the Interior.

Q. Without dealing particularly with the authors at this moment I meant to ask you to state the character of the publications?

A. Technical books on the subject of manufacture and the usage of petroleum, and treatises on the apparatus in the use and manufacture and test of petroleum and its products.

Q. Have you also had occasion to read current trade papers on the subject?

A. Current trade papers and the government publications and bulletins of technical societies with which I am connected.

Q. Have you had anything to do with the publication or editing of papers on the subject yourself, and books?

A. Yes, sir.

Q. What have you had to do in that respect?

A. I think it was in 1815—

Q. 19 you mean—

A. 1915, I mean, I was asked by the authors of Bacon and Hamor's work on petroleum to read the proof which I did critically and made many suggestions to them in regard to the contents of the book.



Q. What was the name of that publication?

A. Treatise on petroleum, in two volumes; they are considered today the most comprehensive and the best work on the subject of petroleum.

Q. Known as American Petroleum Industry?

A. That sounds like the name.

Q. Are these the volumes you refer to? (Exhibit volumes to the witness.) A. Those appear to be the volumes.

Q. And that is the name?

A. American Petroleum Industry, Bacon and Hamor.

Q. You say your services in such revision are stated in the preface of volume one?

A. In the preface of volume one.

Q. What field do those books cover? The entire field of the petroleum industry?

A. The entire range from the geological part of the production to the shipping of the finished product, and to some extent their uses.

Q. Now, have you had anything to do with other publications—is that the publication—is this last publication that you have been talking about used as a text book in the study of the subject?

A. I am unable to say, of my own knowledge, whether it is used in institutions of learning. I know it is a book that is very widely used and quoted.

Q. Well, have you had anything to do with any text books on the subject?

A. In the year 1917, I think it was, I was requested by the chairman of the International Correspondence School to revise the manuscript of a proposed text book on the manufacture of petroleum, which I did.

Q. What was the name of that book, do you know?

A. No, it was a text book for the Scranton Correspondence School.

Q. What subject does that deal with?

A. With the manufacture of petroleum.

Q. That is just the refining end of the business, as different from the previous work?

A. Just the refining practice. It was limited to that.

Q. Have you reviewed manuscript of others on the work yet unpublished?

A. I recently reviewed the manuscript written on a forthcoming work by Hamor and Padgett on the *evaluation* of petroleum and natural gas.

Q. Have you done anything in the way of writing yourself on the subject?

A. I have written a good many papers on the subject, but mostly for private consumption.

Q. Are you a member of any technical society?

A. The American Society of Mechanical Engineers, the Franklin Institute, the Society of Chemical Industry and the American Chemical Society, that I recall.

Q. Does your membership in those societies afford you contact with persons particularly versed in this subject?

A. It does, to a considerable extent, it affords me their publications which deal with a wide range of subjects which pertain to the petroleum business.

Q. Mr. Tabor, I would like for you to describe——

By Mr. Swacker: Is there any desire to cross examine Mr. Tabor on his qualification as an expert at this time?

By Mr. Payne: No.

Q. Mr. Tabor, I would like for you to describe in comprehensive and yet simple as possible way the art of refining and what the products known as gasoline and naphtha are, and unrefined naphtha—or with respect to the last, just give the other first?

A. There are many different processes of refined crude oil but the process best known and in use is to take the crude oil in the condition it comes out of the ground——

Q. Mr. Tabor, will you speak a little louder and slower?

A. The ordinary way of refining of crude oil is to take it practically in the condition it comes out of the ground and charge it in horizontal cylindrical tanks, very much like horizontal boilers but without tubes. This still is over a furnace from which the fire boils the oil in the still and it passes over as a vapor and the vapor passes through tubes submerged in water which condenses the vapor into liquid. In the case of boilers charged with water the distillate is all one character. It boils about 210 to 212 depending on the altitude and the product from beginning to end is practically the same, just water. Crude oil is a substance made up of a large number of different liquids and when it is boiled the first vapor coming over partakes principally of the lighter portions of oils of lower tensions, these are lighter in color and lighter in weight per gallon—then gradually as the heat gets greater the temperature rises and the product that comes over is heavier in weight and darker in color and have more body. From the beginning of the business it was customary to call all the condensed portion of the vapor down to the point where they are used—where it is used for making kerosene or lamp oil, naphtha, that is what it is called in the generic and family name applied to the whole product specifically that you may see everything that came over until the gravity was about 52

by the Baume' Scale the crude naphtha product, any product that came after that went into the lamp oil, this crude product was divided up to suit the demands of the customers and that division was generally made in a steam still which is a horizontal cylinder, but instead of using fire to boil the oil, free steam was blown in to the bottom of the still through perforated tanks. By using steam instead of fire it was possible to make a separation and a better separation was made than in the first fire stills distillation and easier to make and course the steam still dealt with the lighter portions of the distillate from the crude oil. Now take from the early day and that comes from reading literature. I quote from Peckam, census report, 1885, it is stated it was in common refinery work about 15 per cent of the naphtha came from crude oil from one hundred barrels of crude oil, fifteen barrels naphtha made and out of that fifteen barrels of naphtha, about one-half a barrel one-half per cent of the whole crude was made into gasoline, the great part went into what was called naphtha, actually specific naphtha which took the family name. And that has been the strict technical name for those oils ever since, and it is so called in all the authoritative literature on the subject, Government publications and others. The gasoline, the amount of gasoline made, as you will see, was very small, from 100 barrels of crude, there would be a half barrel of gasoline that was made from 100 barrels of crude. And that was around 76 to 80 gravity and it was used to make gas, that is what gave it its name, because it was used to make gas in the gas machines of the Springfield type. These were used by people that lived in the country and put up near their houses to light their houses with, and it is simply a process of forcing air through a body of this very light gasoline. The gasoline might be—you might saturate a can of sawdust and they generally used some absorbent earth that would hold the gasoline, and then force air through this earth or sawdust, and that was what was called carburet the air, and made it so it would burn and give a very good light. Those plants are still in use today, and that was, for a long time, the only thing called gasoline. *It would make it so it would burn and give a very good light. Those plants are still in use today. And that was what, for a long time, was the only thing called gasoline;* that was 76 to 80 Baume gravity. That continued until automobiles came into use, and when they did, gasoline was used to propel them. It was, of course, used in a little different way, the different mixtures, than where it is used for burning; the air is mixed so as to make an explosive mixture rather than a mixture that would burn slowly. And that continued, until by and by the automobiles came along so fast it

run the gasoline--there wasn't gasoline enough to supply them and then they had to go to the naphtha to get something heavier, but they called that gasoline, because the people who used gasoline knew nothing about the designations, proper designations of petroleum, and their carburetors at that time had been made to use this very light material; so the people that had the material didn't know it was naphtha, they called it gasoline. Then the manufacturers had to make their carburetors so they would burn the heavier material, until finally, in 1885, according to the census report, where one part in thirty was naphtha, the whole naphtha product was prepared, that is, thirty parts of naphtha, and they called it gasoline, and more than that, they put some kerosene in it, and that meant the automobile people had to change their carburetor to burn heavier and heavier material, but they still called it gasoline. That is the proper name for it isn't gasoline, from the technical standpoint. The automobile business has run away with the petroleum business. People in the crude oil business attempted to keep up with the automobile requirements. A great deal of oil is wasted that way. It not only has run away with the whole business, but what we would call the terminology of the business, that is the name. They dominate the names used in the gasoline business, dominate the whole oil business, and they call the product all sorts of names; some call it benzine, they talk about benzine buggies; some call it naphtha; some gasoline, and some use the name gas for short. We, as refiners, have to know all those names. We have to recognize it under whatever name is used, and we also have to differentiate when the material is ordered for other purposes, apart from that.

Q. You haven't said where gasoline stoves came in?

A. The light material was used for gasoline stoves, then a little heavier was called stove naphtha. Naphtha is a name much applied to the material used in stoves where they burn gasoline with a wick.

Q. Where did those come in? Ahead of the automobile?

A. Yes.

Q. After this Springfield machine came in?

A. Yes, which are still in use.

Q. And where did what is called naphtha launch come in?

A. That come along the same line as automobiles.

Q. Where in the history of things, did it come in with the automobile before or after, or where?

A. I am not able to state exactly.

Q. Is it the same material?

A. Yes, sir, it is the same material.

Q. The same material the automobilists use is also called naphtha when used by a launch? A. The same material.

Q. What effect did the advent of the automobile demand on the business have on the art of refining?

A. I say that many refineries devoted their attention to making automobile gasoline to the exclusion of all other things, *sacrificed* everything else, and in the manufacture of the product they put in a supply of kerosene and even had bensol and coal tar, may be coal tar naphtha, and in order to supply the demand, the Cracking process was invented, which involved the use of every oil every distillant which otherwise would have sold for first oil and burned, were changed into material similar in its usage to the material distilled from the crude oil in the ordinary way.

Q. Explain how they did that, if I understand you, to get the gasoline out of something more suitable for other material than making gasoline?

A. Get the material, get the gasoline, and there are several processes, probably different somewhat from the Cracking, but the products are sold for gasoline.

Q. And what is this Cracking process?

A. The Cracking process is another name for destructive distillation. Now, in the distillation I have been describing, it is just a separation. It is just as if you mixed together some light gasoline and some what I call naphtha, and then some benzine and some kerosene oil and some lubricating oil; you mix them altogether in the still and then build a fire under the still and run them off slowly, and if you run them off carefully enough you get pretty near what you started with. That is what a fractional distillation means. They can't do it exactly, but they get it as near as they can.

Now, when you make a destructive distillation, it starts with the heavy oil, and by keeping a pressure on the still, but in making, as the Cracking process, pressure is put on the still which runs and causes a heavy oil to be heated to a temperature higher than you could have the pressure; that is a higher temperature than ordinarily would be necessary to distill it, if distilled at ordinary temperatures in the open still, and in so doing, the oil is broken up in the latter product; the heavy oil is broken up into light oil, which didn't exist in the previous distillation. That is, it was actually made by the excess heat used. Now, there are many methods of doing that work, but that is the essential principle. Another way of making gasoline which has a limited use, because it is a patented process, is charging heavy oil into a dis—into a still and distilling it by the andro-discosuf-shock, the best known process of this is called the McAfee process. That process differs from the Cracking process, gives a naphtha which is sweet and light in color and seemingly just like the gasoline you get from crude oil distilled in the ordinary way, and you can make

it from a heavy oil that the ordinary test shows has no gasoline in it at all.

Q. Now, *the*, is naphtha produced from anything else but crude petroleum oil?

A. I have spoken of naphtha; that is a naphtha made from coal tar products called benzol; then there is a naphtha made from shale, which is very similar to the naphtha made from crude petroleum, and then recent sources of naphtha pretty generally understood, especially in this country, is naphtha made from natural gas or casinghead gasoline. Now, there are three processes I have in mind by which that is made, and one process, and that is more usually applied to natural gas, it is called the absorption process. That consists in passing the natural gas under a pressure through cooling it or through cooled light oil which absorbs a certain amount of naphtha which is carried in that case, and then the oil which is taken off of that naphtha is heated, and the naphtha distills off and is collected and that is known as absorption naphtha, perhaps some called it absorption gasoline.

Q. Speaking of that, Mr. Tabor, have you, in the course of your experience, watched patents issued on processes to be used in connection with refining?

A. I tried to keep a line on all the important ones.

Q. Is this last process that you described the subject of a patent?

A. It is the subject of a patent issued to George M. Saybolt of Bayonne, New Jersey.

Q. Who is Mr. Saybolt?

A. Mr. Saybolt is an oil expert of international reputation who has probably had possibly forty-three to five years' experience in the business. He was originally an oil tester, and as such invented the Saybolt tester, which has had a wide use, and when I first knew him in 1882 he was an inspector for the Standard Oil Company, and at that time he introduced many new instruments, such as the viscosity meters. [viscosimeter.]

Q. And is he also the inventor of this machine known as the Saybolt chromometer? For taking the color of oil?

A. Yes, sir, and of many other instruments not generally known.

Q. It is also called a colorimeter?

A. It is also called colorimeter, but the proper name is chromometer.

Q. Are you familiar with the patent specifications of Mr. Saybolt's invention?

A. I have read them many times.

By Mr. Payne: I object to this, the purpose of an



expert witness to give an opinion upon a hypothetical fact which assumes a fact shown from the testimony.

By the Court: What is your idea of this?

By Mr. Swacker: I am going to show how Mr. Saybolt used the term naphtha in his patent, that is my purpose and my idea is an expert witness is not confined to the testimony before he testifies; that is erroneous, the best class of expert witness is a man that is expert in a particular art and tells his knowledge of that art and let it be applied by itself to the evidence but it may be recapitulated finally by a question on the evidence.

By the Court: I think this would have a tendency to confuse the jury.

By Mr. Swacker: I will leave it at this time.

Q. You described the absorption process of recovery or manufacturing of naphtha gas, what other processes?

A. The best known next process is the compression process and that could be used for taking naphtha from natural gas by thus you have naphtha products from casinghead gasoline.

Q. For taking casinghead—for taking naphtha products from casinghead gasoline or taking casinghead gas?

A. Casinghead gas?

By the Court: This is the compression product?

By Mr. Swacker: This is the process—yes, sir.

Q. This is the process used by the Gypsy Oil Company?

A. Yes, sir.

Q. That casinghead gas that you speak of is it scientifically known whether it is part of the petroleum at all?

A. Comes from the, the opposing theories, some people say it generally comes from the rock strata where crude oil comes from and some think it is distilled off from crude oil in the ground and other ways entirely independent but nobody knows what goes on in the ground, at least I don't know.

Q. What other methods of producing naphtha are there?

A. There are some refrigerating processes, take the naphtha from the casinghead gas and the natural gas the material—but that is comparatively unimportant and not used much, not much used to my knowledge.

Q. What is meant by the phrase naphtha fractions?

A. The fractional distillation of crude petroleum and is the separation made of the distillant coming from the still turned into the different tanks to serve different purposes and they just separate and come off in fractions because they go—they all go to make up all crude oil and the parts I have stated which come off from the crude oil from the beginning



of distillation, down to what goes into burning oil is called the naphtha fractions, that is the generic or family name for it.

Q. Now then is there, is this process of compression confined to casinghead gas or is it applied on like gas otherwise?

A. It is and can be and also this absorption process can be applied to any gas containing in condensible liquid.

Q. Well and under what circumstances is it so applied.

A. With relation to the petroleum business it is applied in the refineries who use the gas which passes off from the still and condenses by ordinary condensor which should otherwise go off in the air. That is taken from the gas pipes in the still by suction and compression and passes through the condenser in the same way as is done in the casinghead gas from compression plant and product utilized in a general refinery.

Q. Is that gas you speak of which fails to condense practically the same as the casinghead gas? A. Yes, sir.

Q. And when compressed into a liquid it is the same material as the material compressed at the compression plant at the casinghead plant?

A. Some of it, depends entirely upon the character of the distillation in the still. As soon as the gas is taken, if it is taken from the still where they are carrying on the fractional distillation as I first described it is precisely the same material as the casinghead product but if it comes from the still where the Cracking process is used, it is quite different in character.

Q. Is it always though a material out of which to make gasoline?

A. It is always a material which can be used in blending, in blends which meets gasoline within the limits. In cases I have been familiar with it is possible to use all that has been produced in gasoline plants.

Q. Now is the same gas found otherwise than these two manners that you have spoken of that is casinghead— What do you call this gas that fails to condense in refining?

By Mr. Payne: Your honor, I object, the facts have been brought out in the case I believe the examination of an expert that the defense is limited to the facts which have been shown.

By the Court: I think so unless there is some special reason.

By Mr. Swacker: We are going to establish technically just what this material is.

By the Court: He can testify what it is and give his reasons for it.

By Mr. Payne: Why doesn't he confine himself to the facts in the case?

By the Court: Yes. I think you are going on the outside under a dissertation which tends to confuse the jury. Now let him give his reasons and if there is any reasons for extending the territory that will become material.

Q. Then, Mr. Tabor, will you state what is gasoline, describe it technically what it is?

A. Gasoline in the strict technical sense of the word is the product which is substantially 76 to 80 gravity as described and refined distillate from petroleum which is suitable for use in carbureting air for making a gas suitable for burning in private dwellings.

Q. That is what the article of commerce known as gasoline is?

A. That is one of the articles of commerce known as gasoline for that particular purpose, that is the original name. Now there are other articles of commerce and that is what has been developed by the automobile business. For that purpose we will say that gasoline is a product, a combination of products of naphtha produced from crude oil, natural gas, casinghead gas and other source which are made suitable for use in the general run of automobiles which use suction carbureters. It has to be suitable for such use, that is not material that will run one make of car but any make of car that comes along equipped with the ordinary suction carbureter today.

Q. You are thoroughly familiar with this material that was produced by the Gypsy Company at Kiefer, Drumright and Jenks are you? A. Yes, in a general way.

Q. Is that material gasoline or not?

A. It doesn't fulfill either of the specifications for gasoline which I have given. I do not consider it gasoline. I consider it unrefined naphtha.

Q. Why do you call it unrefined naphtha?

A. Because it requires refining to fit it for the market.

Q. Is it sold or has it been sold by the Gypsy Company commercially?

A. The Gypsy Company, when they started in business, attempted to market it direct to customers in the northwest and failed, tried it long enough to be satisfied it was a failure. The losses from tank cars, which we knew, occurred, was large. The losses claimed by customers was still larger than we could believe actually occurred, and it was found impractical to continue it.

Q. Now, is this casinghead sometimes blended by producers to make commercial products? A. Undoubtedly.

Q. What kind of blend do they make in order to make such an article?

A. Well, all sorts of blends are made, of greater or less

desirability; some people blend it with kerosene and some with heavy naphtha, and they seem to find a market for it. I have known people who made it that would not market it under their own name, but sold it to jobbers. It is only a question of using the right blending material to blend it, but a great many don't use the right blending materials.

Q. Well, is this product they make—will this product they make run a car that comes within the definition you gave a while ago, that would run a car?

A. Why, undoubtedly it would have to run a car in some way or they could not dispose of it.

Q. Now, in order to make a gasoline, is it necessary to make a different blend than that blend used by the Gypsy Company at Drumright and Kiefer? A. It is.

Q. Will the plain weathered casinghead unblended run a car at all?

A. If it is weathered enough it will, but not such as we weather it. We weather it to about ten pounds vapor pressure.

Q. How much loss would be involved to weather it down to a point where it would be practical to run a car?

A. I should guess if you take off seventy per cent, the other thirty per cent would be practicable.

Q. None of this material that the Gypsy Company is accustomed to ship is weathered down to that test?

A. We weather is sufficiently to ship in order to come within the I. C. C. rules, which is ten pounds.

Q. About how much more weathering is that, when you say weather it down to thirty per cent, do you say thirty per cent of that?

A. I said down to ten pounds vapor pressure.

Q. But you said that could be further weathered to some point where it would run a car?

A. Yes, sir, and I said that was merely an estimate, by taking off seventy per cent and leaving thirty per cent, it might not do it. I would not guarantee it to run the car satisfactory. That would depend as to the times, that is, at all times and under all conditions.

Q. Now, what is the object of the purpose of the blending that is done by the Gypsy Company?

A. Simply, it is blended sufficiently to get the product to the refinery where it is—where there is suitable material for putting it into to make this gasoline.

Q. What do you mean by getting it, sufficient to get it there?

A. To be able to ship it in ordinary tank cars under the rules of the I. C. C. rules, simply reduce the vapor tension to

ten pounds, but it is not a refined product suitable for market, but it is shipped to the refinery where the real blending and refining is done.

Q. And this plant, in such plants as has done the refining?

A. No, sir, it is not scientifically blended, but put with a convenient heavy material to reduce the vapor tension to a point where you can get it to the refinery and there handle it properly and blend it as it should be.

Q. What function does the—does it provide in the way of preventing loss?

A. Why, it prevents excessive evaporation and reduces the danger from fire in transportation.

Q. Is that merely an alternative or other substitute of weathering?

A. If we could not get it to the refinery in any other way and could not use it where it was, that could be the only recourse, to wether it, that is, distill it. The only difference between weathering and distilling is that in weather distillation it goes off in the air and is lost.

Q. What is the reason for sometimes weathering and sometimes blending.

A. It depends entirely on the nature of the material; the material from some wells in some fields, what we consider a reasonable amount of weathering by reducing it to ten pound vapor tension and in other fields, if we tried to weather it, we lose so much we feel it is necessary to bring heavy material to make the body heavier and mix it with it and pay the freight on the heavy material there, and pay the freight on the heavy material back, for the purpose of being able to transport this.

Q. What does the term refining cover in the petroleum industry or business?

A. It covers the ordinary definition of the word refining with some additions. The ordinary meaning of refining is to purify, make fine, remove extraneous matter; remove things that don't belong in the matter. Shall I define that or go on and define—

Q. Go on and define that, and state how it is used in the refining business.

A. Shall I define that as far as I have gone, in the application as far as I have gone?

Q. Yes, sir.

A. What is a very simple matter—a very simple illustration I have in mind, you are allowed to ship with every bushel of grain one pint of chaff, and if you had a bushel of grain and a quart of chaff and wanted to make the shipment, you might take out a pint of the chaff, or if you did not want to do that, you might add a bushel of grain that had no chaff in

it at all. If you take a bushel of grain that had no chaff in it and add it to a bushel of grain that had two pints of chaff, then you have two pints of chaff in two bushels of grain. You can do it either way. The same way as in the refining process; that would not ordinarily be called refining, but take a matter of refining, for instance, the silver—

Q. Would not ordinarily be called refining as applied to grain?

A. Yes, sir. But it is the same process as used in the refining world. I explain it because it is a simple illustration. I think to get the refining process—

Sterling silver is 92½ per cent pure silver and 7½ per cent copper. Now, if you have got a mixture, if you have got one hundred pounds of what is found to be sterling silver, and seven and a half per cent copper, there is no extraneous matter in it; but if you happen to have one hundred pounds of mixture, put out to be sterling silver, and found there is eight pounds of copper, then you would have some extraneous matter. Now, there would be two ways of refining that copper. One would be to take so much out of that copper, so what was in there would not be more than 7½ part of the hundredth of the whole; or you could add enough pure silver to it so there would not be more than the proportion of seven and one-half, and when you do it either way, you will comply with the specifications, and either would be refining it. Either taking out a part of the impurity or adding so much of a pure material to make up the specifications.

Q. Now, is that species of treatment also applied to the petroleum industry?

A. Yes, sir. Now, in the petroleum business we extend the meaning of refining a little further. We consider as refining anything which improves the quality of an oil or a petroleum products and fits it for the market. All we call refining, whatever the process is, and there are many different refining processes we use, is dependent upon the character of the material, and what you want to make it for and what you want to sell it for, and what your customers demand.

Q. How do you describe the material before it has reached this finished marketable stage, I mean name of the material?

A. It is unrefined, sometimes called crude product, sometimes unfinished product, but unrefined is a general name that applies to it.

Q. Now, what is the difficulty with this casinghead material, in the way of it not being gasoline, as you say?

A. It has too much light end to have a permanent character. That is to say, it is too wasteful to use, too much loss in handling.

Q. How do you describe it technically in the refining business, the fault?

A. The fault, it has too much light end in it. It has too much light end in it to be used in suction carburetors and too much light end for safety, and too much light end for use economically—such excessive loss by evaporation.

Q. What is the term used to measure the degree of such light ends? A. That is determined by distillation test.

Q. What term is applied to the measure of such quality of the material?

A. Why, it is determined by the boiling at a given temperature and when you do distill it and try to collect the parts, there is a large part of it lost. An ordinary specification for gasoline is when you use the glass or flask, such as is over there on the floor, you must get back ninety-five per cent of the one hundred parts you start with, you must have 95 of the parts. Now, the unrefined naphtha shipped by the Gypsy Company from Kiefer and Drumright and Jenks to Port Arthur, you wouldn't get over eighty-eight per cent and possibly eighty per cent back, which makes a great loss. The specifications of the United States Government, United States Navy and Aviation gasoline, these are specifications the government chemists test it and distill it and in this way with the flask, and if you don't have ninety-five per cent of what you start with, they reject it and refuse to receive it on contract. Consequently, you have to make your product comply with that requirement, and the only way to do is to take off the light end.

Q. What about the requirements of the different states?

A. My understanding is, there is a law requiring certain specifications in the State of Oklahoma, and I understand there is one in Texas.

Mr. Chambers: We object.

The Court: That is in regard to what may be sold. The law is the best evidence; he is not an expert. I will exclude that.

Q. Are there any states in which the Gulf Refining Company has been unable to sell a product such as this for the reason of not conforming to the requirements?

By Mr. Chambers: Yes, we make the same objection.

By the Court: Yes, you cannot prove a law indirectly by the exclusion.

Q. Is this material to your knowledge dealt in at all as an article of commerce, what we have been describing this material shipped from Jenks, Drumright and Kiefer?

A. I have known that and even lighter products to be



shipped for special purposes, such as fuel in welding. There is a product called gasco, a very light portion but it is usually shipped in pressure tanks.

Q. But that is of higher vapor tension than this?

A. Oh, yes, and this could only be used for purposes like that.

Q. Well, it is sometimes sold to refiners by the producers?

A. Oh, yes, anything that is capable of blending is salable to refineries and this is part of it.

Q. Now, as far as you have knowledge, how is it described when sold to refineries?

A. Under a multiplicity of names, casinghead naphtha, casinghead gasoline and other names that do not occur to me for the moment.

Q. You heard the expression, raw casinghead?

A. That is a very common term, there is some different opinion as to how it is used, some people apply it to a casinghead gasoline that is unweathered and unblended and others apply it to one that has been weathered and not blended. My practice is to apply it to products that have been neither weathered nor blended.

Q. Well, now how is that product further characterized by some other adjective than raw?

A. It is characterized by all sorts of adjectives but not any I think that I use.

Q. Is it sometimes called wild?

A. Very common designation but I do not use it. I do not use it. Very common use among the men working there for the reason that if you have that gasoline in a tank car and take the dome off the car would be empty, shoot off in the air and that is why it is called wild. So hard to chain up and hold.

Q. What are the common designations when it is blended?

A. Well, as I say, some people still call it raw casinghead.

Q. No, I am talking about when it is blended?

A. Called blended gasoline. We call it as we ship it, blended, it is unrefined naphtha. Other people have other names for it.

Q. Is the—is it qualified by the character of the material with which it is blended?

A. Yes, sir, kerosene blend, and naphtha blends and so forth.

By Mr. Swacker: If your honor please, we have a number of instruments which are used in this art with which we sought to illustrate some of these matters. If the court thinks it would make it clearer by doing that we would be glad to have them put over here and Mr. Taber can describe them, we have what we call the Engler flask



still which is used for these distillation tests, hydrometers and vapor tension gauges and a number of other instruments utilized in connection with this business—

By Mr. Payne: That might be a discussion that might be very interesting but I can't see how it would have any evidentiary bearing in this case.

By the Court: I don't think so either, the question is whether it is gasoline, whether that commodity shipped down there is unrefined naphtha or gasoline and whether this defendant, through its officers violated that rate.

By Mr. Swacker: I don't know whether I asked you before but if I did not I will ask you again.

Q. Is unrefined naphtha in your judgment and your knowledge of these terms and material, the proper name or not for this particular material shipped from Kiefer, Jenks and Drumright to Port Arthur?

A. I consider it a perfectly proper designation for it.

Q. As between the name gasoline and unrefined naphtha which is the more accurate designation?

A. Unrefined naphtha between the two. The other would be satisfactory but certainly not gasoline.

By Mr. Swacker: You may cross.

*Cross Examination by Mr. Payne.*

Q. Mr. Tabor, you spoke of the unblended casinghead gasoline produced at Jenks and you called it a gasoline of 76 to 80 gravity, is that correct

A. I did not, the record will show. Not intentionally.

Q. Just a moment ago you were asked what people called this product when it was blended with the casinghead and you stated it was blended gasoline, did you not, what was blended with the casinghead, whatever it is the record will show?

A. Well, you will have to tell me before I can answer it.

Q. Now is it not a fact that not only the blended casinghead gasoline that you shipped southbound but also the unblended gasoline is of a higher grade and a higher quality than the naphtha that you blend with it?

A. You will have to define what you mean by higher, higher in what respect. It will go higher in the air if you open the top of the tank cars.

Q. Higher in every respect? A. No, sir, it is not.

Q. Now as a matter of fact don't you *debase* your southbound shipments instead of refining them?

A. Certainly not. We make them marketable, that is why they are shipped south.

Q. I believe you say that you entered into the petroleum business in 1882? A. On April 1, 1882.

Q. And you didn't start shipping your product from Kiefer as unrefined naphtha until December 2, 1916, is that correct?

A. I am unable to supply the date, we didn't do that in the beginning certainly.

By Mr. Payne: That is all.

*Redirect Examination by Mr. Swacker.*

Q. Did you begin shipping it that way when a rate was published under the name of unrefined naphtha?

A. Yes, sir, we did.

By Mr. Swacker: That is all.

By the Court: I want to ask this witness some questions. Which would be a more accurate name to say, unrefined naphtha or unfinished naphtha?

A. If I fixed the designation I would prefer to call it unfinished. The name was given to us as unrefined and we accepted it as unfinished.

By the Court: But you say unrefined naphtha is more accurate than gasoline?

A. Yes, sir, because we consider gasoline in two senses as a finished product in every case.

By the Court: That is all.

(Witness excused.)

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Thereupon, GEORGE A. BURRELL, produced, sworn and examined as a witness for and on behalf of the defendant testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Colonel Burrell, please state your full name and place of residence? A. George A. Burrell, New York City.

Q. At the present time I am president of the Island Refining Corporation and vice president and general manager of the Bariton Refining Corporation.

Q. Are those concerns in any way related to the Gulf Refining Company? A. No.

Q. Mr. Burrell, will you please state your training and experience with relation to the petroleum industry and particularly with regard to the technology of the business?

A. I received the degree of chemical engineer from Ohio State University in the class of 1906. I received the degree of doctor of science of Wesleyan University. From 1906, until 1916, I was in the employ of the United States Bureau of

mines and first laboratory work having to do with the solid fuel investigation; then in work having to do with the prevention of explosives [explosions] in mines, particularly ventilation problems; and from 1912 to 1916, part of my work had to do with the study and investigation of the natural gas gasoline industry. In 1916, I left the bureau of mines and for almost a year, among other things built, owned and operated natural gas gasoline plants. In 1917 I entered the service of the United States army and had charge of the research division of the chemical warfare service.

Q. Now just what was that research of chemical war board, what would it consist of?

A. Organization that had to do with the development, invention and device of all sorts of gas, masks, poisonous gas and all sorts of devices used in the art of chemical warfare.

Q. What was it composed of, whom?

A. It was composed of scientists eminent in their profession from all over the country and in fact it was the largest research division the world ever saw.

Q. How many of them were there?

A. About fifteen hundred technical men and about five hundred in the administration division, clerks, bookkeepers and accountants and purchasing agents, etc.

Q. How many of the technical men were there eminent in the profession?

A. They were the highest in the profession.

Q. How many in the fifteen hundred would be regarded as eminent, I don't mean exactly but approximately?

A. I should say about one hundred.

Q. Did that embrace practically all of the eminent scientists of the subject in the United States? A. Yes, sir.

Q. And you were at the head of that research committee?

A. Yes, sir.

Q. And you directed and looked after their investigation did you? A. Yes, sir.

Q. Of their inventions? A. Yes, sir.

Q. Before this research, before you entered the war department research division, were you engaged in any professional business aside from this building and owning the plants that you spoke of?

A. I engaged in a general consulting business with particular reference to petroleum chemistry and petroleum engineering.

Q. As a consulting engineer in that field? A. Yes, sir.

Q. Now have you entered—upon your entering this research division of the war department were you commissioned and what? A. I had a commission as a colonel.

Q. As a result of the work done was there Congressional recognition of the work done by you?

A. Yes, sir, I received a distinguished service medal.

Q. Have you made any discoveries in this field of science?

A. Yes, sir.

Q. What were they?

A. One I have in mind had to do with the location of a supply of helium and the organization and the starting of that work. Helium is a substance found in natural gas, and used as a substitute for hydrogen in heavier than air craft, balloons, and dirigibles. It is non-inflammable and hence it has a great advantage over hydrogen. As a result of that work the war department spent about five million dollars toward extracting it and they have plants in operation at the present time.

Q. Did you make any discoveries in connection with this very gas we have been talking about, this casinghead gas?

A. Yes, sir.

Q. What did you do with that?

A. I was the first one to show the real composition of casinghead natural gas.

Q. What do you mean by real composition and how did you show it?

A. It was generally known that casinghead natural gas was essentially a mixture of paraffin hydro carbons. It wasn't generally known what they were and in what quantities they were. By means of what is known as fractional distillation, at low temperatures whereby liquid air is used I was able to separate this natural gas product, that is the casinghead natural gas into different components.

Q. What did you find the elemental composition of casinghead gas to be that way?

A. Mixture of paraffin hydro carbons with small quantities of carbon dioxides and nitrogen. The paraffin hydro carbons consists of the hydro carbons, methane, ethene, propane, normal butane, iso butane, pentane, hexane, heptane, octane, nonane, with small quantities of still higher hydro carbons.

Q. What process was it you used?

A. The process called fractional distillation at low temperature.

Q. That is with liquid air, at extremely low temperature?

A. Yes, sir.

Q. What temperature?

A. Liquid air with a temperature of 194 degrees below zero, the temperature was changed and constantly raised up to the temperature of zero, and the distillation made over this entire range.

Q. That is the *anthysis* of the usual process of distillation by heat? A. Yes, sir.

Q. When did you make this discovery?

A. That was during 1915, I think.

Q. Was that in connection with the research work for the bureau of mines?

A. It was in connection with the research work for the bureau of mines in connection with my work on the natural gas industry.

Q. Have you written on this subject? A. Yes, sir.

Q. What have you written?

A. I have published twenty or twenty-five publications at various times, I should say, some consisting of bulletins, technical publications, and magazines and magazine articles.

Q. Also written a book on gasoline?

A. Yes, sir, I wrote a book on gasoline.

Q. The bulletins you spoke of were bulletins which the United States Bureau of Mines published and disseminated?

A. Yes, sir.

Q. And they are in general circulation among the profession, are they? A. Yes, sir.

Q. Disregarding any question of modesty so far as yourself is concerned, they are accepted as an authoritative work of the Bureau of Mines, is that correct?

A. I think so. I will say this, there have been recent publications issued bringing the industry more up to date which are very good, which I consider equally as valuable, perhaps more valuable, than my earlier publications.

Q. That is, the Bureau of Mines is constantly getting from research work and as it gets sufficient volume of it, it issues bulletins? A. Yes, sir.

Q. And a number of the bulletins, you are the author of them? A. Yes, sir.

Q. And since you left there, it has continued to issue such bulletins? A. Yes, sir.

Q. Now, are you a member of any technical societies?

A. Yes, sir.

Q. What are they?

A. American Chemical Society, Society of Chemical Industry, the American Institute of Mining Engineers, American Petroleum Institute, Natural Gas Association of America. This Natural Gas Association—

Q. This Natural Gas Association of America, have you ever written any paper for it that has received, that was disseminated by it?

A. Yes, sir; I have written several publications for it, several articles for them.

Q. Well, does that organization have a system of awarding a prize for particular articles at regular intervals?

A. Each year they do that.

Q. Have you ever written articles which have taken that award?

A. My collaborator, Mr. Oberfell, and myself, received a prize last year.

Q. What was that article about?

A. It had to do with the testing of natural gas for gasoline content.

Q. Now, I suppose the question would seem superfluous, but are you familiar with the technical literature on the subject of the petroleum industry, and also especially pertaining to casinghead gas and condensate? A. Yes, sir.

Q. Aside from your function as officer of these several corporations you have named, are you engaged in the practice of your profession as a chemical engineer?

A. Yes, sir, to a limited extent.

Q. Just as a consulting engineer, is that correct?

A. Yes, sir, I am on the consulting staff of several of the large companies. I have under development a number of things pertaining to the industry.

Q. Have you any interest whatever in the outcome of this litigation here? A. None that I can see.

Q. You are not interested in the Gulf Refining Company yourself in any way, shape or form, are you? A. No.

Q. And you have no anticipation of this decision affecting you or your business, is that correct?

A. I cannot see any at the present time.

Q. What has been your experience with respect to refining of petroleum oil?

A. I have for about a year and a half operated a small refinery where about thirty people are employed, a regular refinery, so far as its operations are concerned, simply small so it is elastic and can easily be changed to suit the experimental refinery conditions; in that refinery, with a corps of experts, I have been studying refining problems for about a year and a half; as vice-president of Richmond-Levering Company, I have had charge in the last year and a half of the building of three refineries, I have attempted to follow the petroleum industry more or less during the past ten years.

Q. Have you studied refining as an element of general knowledge and science that you have been directly engaged on? A. Yes, sir.

Q. Will you say that blending is a refining process as applied to casinghead condensate, taken to a refinery and blended with still run gasoline?

A. I think it is, without any equivocation.

Q. You think it is—you know it is?

A. I know it is.

Q. Is blending an incident, a process rather, of refining, wholly unrelated to gasoline? A. Yes, sir.

Q. Has it been such for many years? A. It has.

Q. And is it an extra delicate art as compared to all other branches of the petroleum refining industry?

A. It is a branch that requires skill and experience in order to perform.

Q. Now, what has been the influence of blending on the gasoline production of the country since it has come into general practice, with regard to the casinghead product?

A. Just this: when I started to investigate the natural gas gasoline industry, it was at a time—about 1912—when the industry was just being commercialized. While gasoline had been extracted from natural gas in 1904, it wasn't until 1912 that several or many plants were put into operation and the industry started off on a real commercial basis. A great deal of difficulty was experienced in handling the light condensate at that time from compression plants, and in fact until the art of blending the casinghead gasoline with heavier refinery distillates was perfected, casinghead condensate was a problem and almost a drug on the market.

Q. Previous to this time, it had been a complete waste, had it?

A. There had been so little of it produced it wasn't enough to make a difference from the gasoline standpoint of the country.

Q. What effect did the art of blending have?

A. To make available for use as an automobile fuel a tremendous amount of natural gas gasoline.

Q. About how much would you say?

A. Approximately I should say in 1919, last year, about three hundred million gallons of natural gas gasoline were produced, the largest proportion of it being casinghead gasoline. This gasoline, in order to make it marketable, as motor fuel, was blended with heavy refinery distillate. Probably in the proportion of three parts of heavy refinery distillates to one part of casinghead gasoline, although it is difficult to give the exact figures, because refineries, many of them, or most of them, do not say very much about their practice in that respect but from my experience in visiting refineries I should say that this is a proper proportion. Then the three times as much as this heavy distillate was mixed with the natural gas gasoline making now available for automobile fuel, I am safe in saying between a half a million, a half a billion and a billion gallons of motor fuel. Now, the amount of motor fuel used in this country was in 1919 close to three and a half billion gallons, so the natural gas industry, through the instrument of blending, produced almost a third of the motor fuel of last year.



Q. Now, you said that blending was a process of refining, I would ask you to liken it to agriculture, would you say it was just as much a part of the art of refining for example, as planting or harvesting, or any other detail of agriculture?

A. I would certainly say that.

Q. Now, Mr. Burrell, will you please define the term naphtha, the name naphtha?

A. In its strictest sense, technically speaking, the best definition of naphtha is the light distillate which comes off from crude oil in the processes of refining, down to a kerosene cut, although some times a kerosene cut is included. Naphtha is also spoken of in reference to coal tar distillates, meaning a light, inflammable liquid, that first cut in the destructive distillation of coal.

Q. In the sense in which you have used it, is that the generic name? A. It is.

Q. Now, has it also a specific application?

A. Yes, it has a specific application.

Q. To what?

A. Particularly to the natural gas gasoline industry.

Q. In what way?

A. In that a certain distillate, speaking of it in terms of gravity, ranging perhaps from forty-eight or fifty gravity to fifty-six or sixty gravity, is used—is mixed with natural gas gasoline in the art of blending. It is also used to designate what is known as painters' or varnish makers' naphtha, and that is a distillate of approximately fifty-two to fifty-four gravity *Bohme*.

Q. It is one of the subdivisions of this general branch you have spoken of as first cut?

A. I prefer to use it that way.

Q. Now, will you define gasoline?

A. I prefer to define gasoline as a liquid inflammable substance or mixture of hydro-carbons suitable for use in an automobile engine of today. Now, I should say that certainly over ninety-five per cent of the gasoline that is used today is used in automobile engines. A small amount is used in making gasoline gas for lighting isolated residences, and similar places, and a small amount is used in stoves. Perhaps a better definition would be, an inflammable liquid, a mixture of hydro carbons suitable for use in any kind of vaporizers.

Q. What do you mean by suitable for use in vaporizing? I don't think that is very clear.

A. As I said over ninety-five per cent of the gasoline is used in the automobile engine. Now a gasoline stove is a vaporizer and one of these air gas machines is a vaporizer.

Q. What is vaporizer?

A. Evaporates, converts from the liquid to the vapor state.

Q. For burning the gas? A. Yes, sir.

Q. Is it an article of commerce a finished product of that character? Yes, sir.

Q. To be used in a vaporizer of some description?

A. Yes, sir.

Q. Whether a stove or launch or lighting machine or automobile? A. Yes, sir.

Q. Those that you have given are strictly technical definitions? A. Yes, sir.

Q. What is the fact as to confusion or otherwise in the nomenclature of the petroleum industry?

A. Great deal of confusion.

Q. What does it consist of?

A. There is more confusion in the popular mind or proper use of the word than in the scientific literature although in the literature some confusion exists, for instance in the public mind the term gas is used, I presume that more people than otherwise drive up to a curb and will ask for five or ten or fifteen gallons of gas and one would hesitate to say what particular term the public would designate for gasoline in ten or fifteen years from now.

Q. What is the situation then, in the refining industry itself as to confusion or otherwise in the use of names?

A. Considerable confusion, for instance some refineries, particularly in the east I shall say, use the term unrefined naphtha, more often than they use the term crude benzine or gasoline in speaking of the first light distillate cut from petroleum.

Q. Now you have heard a witness—

A. Now in the west, I believe Oklahoma the term crude benzine is more widely used in refineries than gasoline.

Q. You heard a witness the other day did you who was connected with the Carter Oil Company testifying as to shipments made by his company to Baton Rouge, Louisiana, which were described as unfinished or unrefined naphtha?

By the Court: Crude, unfinished naphtha?

A. Yes.

Q. He described that material as running from three to fifteen per cent of the crude, is that correct?

A. I believe it is.

Q. Just what do you mean by topping? What is that?

A. By topping is usually meant the division of the crude into two portions, the light distillate consisting of gasoline and kerosene and a heavy distillate, the other portion consist-

ing of and called fuel oil. Frequently a topping plant goes a little further than that and refines the kerosene and gasoline into finished products but the words topping plant and skimming plant are widely used by different people as meaning the same thing, although a topping plant—

Q. Well was the material that he described merely the naphtha distillate or naphtha portion of the oil? A. Yes, sir.

Q. Now is that also sometimes called light and distillate? A. Yes, sir.

Q. Now is what—now in what respect is that material similar and in what respect different from the blended casinghead and the weathered gasinghead shipped from Oklahoma to Port Arthur?

A. It is essentially a similar material for this reason, that casinghead natural gas coming out of the earth and having been in contact with the oil brings out of the well the lighter portions of the crude oil. It is essentially the result of a distillation operation in the ground, this casinghead natural gas.

By the Court: Then there is a process of refining, in the ground?

A. That is one of the processes of refining, yes, sir.

Q. Well is it a complete refining or a partial refining?

A. A partial refining. It is in an unfinished state when it comes out of the ground. The casinghead natural gas that contains gasoline goes into the casinghead plant and sufficient pressure and low temperature is applied to the natural gas to precipitate or condense the material called gasoline, frequently called gasoline, sometimes called naphtha, or unrefined naphtha or unfinished naphtha. That gasoline, those lighter precipitants that condensate a compression plant are similar to the lighter end distillates of a topping plant. It comes from the same source, the crude oil, whether the crude oil is refined in a refinery or in the ground.

Q. What as to their purpose or use or their destination or ultimate use?

A. Gasoline.

Q. Both go to make gasoline? A. Yes, sir.

Q. They are the same material, come from the same source and go to the same end, namely to make gasoline but simply arrived at by entirely different processes? A. Yes, sir.

Q. Are you acquainted with and familiar with those materials shipped from Kiefer, Jenks and Drumright to Port Arthur it—has that been embraced in the study you have made of the subject? A. Yes, sir.

Q. And you understand those blends to be where the material is blended thirty per cent naphtha, and the other seventy

per cent casinghead, and in the case of weathering merely weathered down to the vapor tension rules provided by the Interstate Commerce Commission, is that material gasoline or not? A. It is not.

Q. It is not gasoline? A. No, sir.

Q. It is very popularly called gasoline is it not?

A. Yes, it is, I have so called it myself.

Q. You have so called it that way yourself? A. Yes, sir.

Q. Do you generally use the word gasoline when you do?

A. I have frequently qualified it in perhaps two of my principal publications I qualified it so, bulletin 88, bureau of mines where I speak of the condensation of the gasoline from the natural gas and describe the compression method of making gasoline. I use the word gasoline almost entirely through the book but on practically the last page I make the statement that gasoline as herein used is very loosely applied and the material I am talking about is not gasoline and does not come under that category until properly prepared for market, I made the statement several times.

Q. When was that written? A. 1915.

Q. Long before any of the incidents connected with this situation arose?

A. It was written about 1914 and probably published in 1915, one of the early studies of natural gas gasoline business.

Q. Is the name unrefined naphtha a proper and appropriate description of the material shipped from Jenks, Drumright and Kiefer to Port Arthur?

A. I think it is. I think it is a proper name. If I had been asked to select a name for this I don't say I would have used unrefined naphtha, perhaps unfinished naphtha, but I will say unrefined naphtha is a proper name and gasoline is a wrong name.

Q. And is unrefined naphtha just as much an appropriate name of this material as it is of topping plant material that was described by the Carter Oil man? A. Yes.

By the Court: Well that is not used as unrefined naphtha.

By Mr. Swacker: I know it is not in that case.

By the Court: There is no evidence before this jury that it has ever been called that.

By Mr. Swacker: I beg your pardon, the Coffeyville situation was called that.

By the Court: I don't remember it that way.

By Mr. Swacker: We will call it to your honor's attention that it was.

By the Court: Well I don't remember it that way.

Q. You said that you would have chosen as a matter of preference if you were choosing rather the term unfinished rather than the term unrefined?

By the Court: You mean as a matter of preference or a matter of appropriateness?

A. Probably I would.

By the Court: More of appropriateness?

A. I will say that one is as appropriate as the other. I used the word condensate in my publication many times but for the general public to use the word condensate would mean they would have to be educated in that name and it would not convey to them the fact that this material was an inflammable material, but I really like the word condensate in speaking of the word of natural gas gasoline.

Q. You know there are some different practices of blending in the casinghead fields and industries with a view of making a grade of marketable gasoline? A. Yes, sir.

Q. How does that differ from this material?

A. Well one way to do it is to weather it or evaporate by simple exposure to the air, another by agitation or steaming or by blowing air through it, then mix a certain amount of naphtha with it in such proportions as to meet whatever gasoline specifications has to be met. Another way is to force naphtha into the condensing coils of a gasoline plant so the blend is made right in the plant, itself, and the mixture received in the accumulator tank is already blended.

Q. And when it is blended in that fashion is it usable for the purpose within the definition that you gave for gasoline?

A. Now raw casinghead gasoline as it is made at gasoline plants is not usable in an automobile. A certain mixture of naphtha and raw casinghead gasoline is. Now some place between these two extremes you are going to find a place where it just will work and just over the line where it will not work and it is pretty hard to generalize and say a particular combination will or will not run an automobile. I can say this in general, that a blend containing about thirty per cent naphtha and seventy per cent raw casinghead, the casinghead being the raw material that you produce at your Kiefer plant and your naphtha about 52 gravity will not run either a Packard car or a Dodge car. I have tried them both.

Q. What do you mean by—

A. Therefore it is not gasoline in my definition of the term. I think the casinghead gas itself will not run a car.

Q. Did you obtain some samples of this material and actually experiment with it. A. I did.

Q. What happened, just state your experiment?

Mr. Payne: I object, because the sample is not properly identified, and I have had no opportunity to see the sample nor know where it was made.

Mr. Swacker: We will cover that.

Q. Did you make distillations of the material so you could know whether it was material of the character here in question? A. I did.

Q. Did that distillation test develop that it was this material? A. I judge it was.

Q. Can you state what the distillation test was?

A. Yes, sir, I can.

Mr. Payne: I object to that. That is not a sufficient foundation for the particular character of gasoline extracted long after the period of the indictment. We have such samples; we did not offer them because we thought they were inadmissible, as to what happened after the date in the indictment.

The Court: He says now those samples—he is saying now the samples there that he tested them, and that they were the same material that has been proved here in evidence.

Q. You received this sample from Mr. Sanderson, that he had furnished them to you,—

The Court: That is immaterial. I don't think that would be competent on that theory, Mr. Swacker, but the question here in my mind,—now this witness is an expert, states these samples were presented to him and he tested them and they met the test of the commodity which is described here in evidence. Now, he has made the test of such commodity; that seems to me to come within the rule. If that is not within the rule, I will hear you on it. It seem to me as an expert, he tested this commodity, and says it is so and so, and that comes within the commodity the government sets up and describes as being shipped.

Mr. Payne: I should think, your honor, definite and specific evidence of that sort, a particular car in the indictment ought to be chosen, the colors and gravity and the distillation tests are all in evidence.

Mr. Swacker: They are not complete distillation tests.

The Court: What are the distillation tests in evidence?

A. The distillation tests taken in the laboratory.

Mr. Swacker: Which are only over and dry. But I will ask the witness one other question which will demonstrate.

Q. Is it possible for you to say, as a matter of scientific knowledge, from tests which you have made, that this is the particular character of material that has been testified to here as being the character of materials shipped from Kiefer, Jenks and Drumright?

A. Yes, because in my investigation of the industry, extending over a period of eight years, I have been afforded an excellent opportunity for making my studies. I have visited a great many plants and have examined a great many samples. I know the general character of the product produced in compression plants.

Q. Could a sample be run in on you, that you couldn't tell by the distillation tests that you have made, and would it make any difference?

A. I think it would be rather difficult.

Q. If it reached the distillation test, would you, by that, know it to be that grade of material?

A. I believe I would.

Mr. Swacker: Now, may I ask him to state the distillation test he found?

The Court: I believe I will let him state that if he has made tests. I will let him give his opinion to the jury.

Q. Then will you say, Mr. Burrell, if, in your opinion, the material furnished you for the demonstration that you made with an automobile was the same as this material shipped from Jenks, Drumright and Kiefer to Port Arthur?

A. In my opinion, it was.

Q. Now, then, will you state just what you did with respect to trying the material, to see what it would do on these cars?

A. Two automobiles were secured; one a Packard car and one a Dodge car.

Q. Why did you take two cars?

A. As representing first a high priced car, and second, a more common popular car. Three grades of gasoline were used, one the ordinary motor gasoline that one buys in a curb station at Tulsa. The other, the raw casinghead gasoline, such as is produced at the Kiefer plant of the Gypsy Oil Company before blending takes place. And third, a sample of the blended mixture of the unrefined naphtha which is shipped from the Kiefer plant to Port Arthur. The unrefined naphtha contained the naphtha and the raw casinghead in the same proportion as the unrefined naphtha that is shipped from Kiefer to Port



Arthur. A dozen or fifteen of us witnessed the test. Of course, we rode out to the place of demonstration, using the automobile gasoline which we purchased at the curb station. When we arrived in the country, where a particularly smooth, straight piece of road was available, we all got out of the machines, and the Tulsa curb gasoline was drained from the tank carburetor and system of the Packard car. Raw casinghead gasoline was put in its place and in the carburetor, so there was not any gasoline in that Packard car except that raw casinghead gasoline—we then adjusted the carburetor as best we could do in the car, and it would not start. The raw casinghead was drained from the car and the blended unrefined naphtha was put in.

Q. Did that raw material start the engine?

A. No, sir.

Q. It would not? A. No, sir.

Q. That was material that had been weathered down?

A. Yes, sir, had been weathered down.

Q. Now, you were starting to say something about the blended—

A. The raw casinghead was drained from the car and the blended put in the car with substantially the same result; the unrefined naphtha would not run that Packard car. In order to get the car to going, to give it as good a chance as possible, we put some of the Tulsa curb gasoline in the carburetor and the car ran a hundred yards, about, and stopped, and we got identically the same result with the Dodge car. Neither the Packard nor the Dodge would run. That is my general experience.

Q. That was your expectation?

A. Yes, sir, because in my experience and investigation of gasoline plants—I have visited many isolated places and have visited them in automobiles and at times run out of gasoline which I purchased at the curb station, and I have attempted to use the compression product. Some times I would use it by letting it evaporate until I lost about eighty per cent, and then on a cold day the other twenty per cent will run the car all right. I can not say just where you have to stop in the non-use of the casinghead product for automobiles, but in general the material is thoroughly unsatisfactory for that purpose.

Q. When you say the car ran about a hundred yards, after you had primed the carburetor with curb gasoline, that is just about the distance this priming would take it?

A. Yes, sir, simply used up the Tulsa curb gasoline in the carburetor.

Q. And as soon as that was done, the car stopped dead?

A. Yes, sir.

Q. And you say you have in times past, in your exper-

ience, weathered same down to twenty per cent, so it would run the car; that is not the same material as is shipped, is that correct? A. Quite correct.

Q. That would be an absolute absurd and ridiculous way to use the material? A. Absurd and wasteful.

Q. Have you in your present dealings, business dealings, had occasion to use the term or had used by anybody else in attempting to deal with you the term unfinished naphtha?

A. Yes, sir.

Q. What were the circumstances?

A. Our New Orleans plant is equipped to make gasoline, kerosene, naphtha, fuel oil, coke, and so forth. The light oil or topping plant was finished before the rest of the plant. We made crude distillate or unfinished naphtha and I was importuned by several other refineries to buy that unfinished naphtha, they could buy it at a cheaper price than gasoline or naphtha blends and refine it themselves, and in at least two cases I was asked to sell my unfinished naphtha.

Q. And have you had other designations made of the same thing by potential purchasers?

A. Yes, unrefined naphtha and crude benzine. I believe out west in the Mid-Continent refineries the word crude benzine is more often used than unfinished naphtha and unrefined naphtha inside of the refineries, although I am not sure about that; I haven't visited enough of the Mid-Continent refineries to make sure.

Q. Now, does your testimony relating to the recognition of this product as a result of tests, enable you to know it is the material talked about by the government's witnesses, wholly regardless of Mr. Slater's testimony this morning?

A. Yes, I took no exception to it whatever. I accept it as being the same material.

Mr. Gann: We have no objection to asking independent facts, but for him to subscribe to Mr. Slater's testimony as a whole.

The Court: I understand he takes Mr. Slater's testimony in consideration in giving his expert evidence.

Mr. Gann: He disassociates that in his mind and makes his conclusion on the other part.

A. Yes, I am able to do that.

Q. Not only that, but from your own knowledge, during the time you were in the field investigating that?

A. Absolutely.

Q. Now, you say that this material is positively not gasoline in the proper sense of the word. In what respect is it deficient?

A. All too volatile in character and vaporizes too readily.

Q. What has been your observation of this material in the sense of its recovery on distillation?

A. A very great loss on distillation.

Q. How much? What per cent?

A. This unrefined naphtha will lose probably an average of 15 per cent on distillation.

Q. What is the maximum loss on distillation you would regard as reasonable to be gasoline?

A. Well, I should say not over five per cent; but most gasoline will not lose that much on distillation, two to two and one-half per cent, is a fair figure, I believe.

Q. Now, you define naphtha as a generic term covering those portions of crude above kerosene. I will ask you what the fact is as to the scientific literature on the subject with which you are familiar?

A. The scientific literature makes frequent reference to the use of the term naphtha as a generic, comprehensive term, meaning that entire light oil distillate and including what is known today as the gasoline and naphtha as the latter is used specifically; naphtha is used a great deal by the literature as meaning that entire cut, that light distillate from crude oil, the first cut that comes off in the refinery.

Q. Now, are you familiar with the material known as still gas gasoline? A. I am.

Q. How does that resemble this material we are talking about? A. Resembles it very closely.

Q. How does it arise?

A. In the distillation of the crude oil in the refinery, the first material that comes off is a gas. The water in your condensing coil is not cold enough to condense that gas, so that it goes out of the system and escapes, unless one builds in the refinery a casinghead plant. In other words, put in a refinery some kind of a device as the Gypsy Oil Company has at Kiefer, so the gas coming off of these stills is trapped and caught in this still gas plant, and gasoline condensed out of this gas, adding a great deal to the economical operation of your refinery. If you—It is just capturing that part of the gasoline that would otherwise be lost.

Q. Now is that material gasoline when it is first liquefied?

By Mr. Payne: I object to that as having no issue in this case.

By the Court: I think the objection is well taken.

By Mr. Swacker: We are going to show what is done in the refinery to show it is the same product—same proposition.

By the Court: I think it is incompetent.

By Mr. Swacker: May I ask if it is blended in the refinery the same as this material—

By the Court: I don't think it has any relevancy, it might become so on cross examination.

By Mr. Swacker: I think it is permissible, to show the blending is a part of the refining as applied to it as in casinghead material all together.

By the Court: That—I don't understand it is controverted, that blending is a process of refining, I don't understand that is in the issue, the government concedes blending is refining.

By Mr. Payne: We contend they just mix it they don't refine it. We don't concede that.

By the Court: Very well, answer the question.

A. It is blended with the heavier distillate in the same way as the raw casinghead gasoline or unrefined naphtha which is sent in to that refinery.

Q. What is a comprehensive definition of refining, not a long one but as accurately and comprehensive as you can give?

A. I should *should* say the preparation of a raw material for market—for commercial use.

Q. The process of the *refining* have anything to do with it?

A. Yes, sir, the process going to make it up, the completed whole, completes the refining process, the parts refined in one place and another part refined in another place and another part refined in another building and finally comes in a refined product.

Q. Is it a fact whether it is essential to casinghead to make it usable at all that be blended or whether the gasoline produced at a refinery needs the casinghead to make it usable?

A. Well both things happen, each help the other.

Q. And to what extent does the casinghead help the gasoline, in other words how much casinghead can you blend into gasoline?

A. Well the general practice is to put in around twenty-five to thirty per cent casinghead. A great many people only put in five per cent or ten per cent. It is very difficult to say the average because the refineries don't publish their average. Some put in five per cent and some ten per cent and some twenty-five and some thirty.

Q. Doesn't that often depend upon the material available? A. It does.

Q. On the quantity of the particular grade available?

A. Yes, indeed.

Q. Now I am not sure whether I covered this before but I will ask you once more if I haven't. You did say did you not that you regard unrefined naphtha as an appropriate description of this material?

By the Court: Yes, he answered that.

Q. And you said you regarded gasoline as an absolutely improper name for it? A. Yes.

By Mr. Swacker: That is all.

By Mr. Swacker: You may cross examine.

*Cross Examination by Mr. Payne.*

Q. Did you make a distillation test of the gasoline or the fluid which you attempted to use in your Packard and Dodge cars? A. I did.

Q. What was the initial and the end points?

A. I put notes down in my note book as we made the tests. The raw casinghead gasoline had an over point of 80 degrees on the Fahrenheit scale. It was dry at 216 degrees, the recovery was 83 per cent. The vapor pressure was 9 and 2 tenths pounds the *Beaume* gravity was 81.5 at 68 degrees. The blended material consisted of 30 per cent naphtha and seventy per cent raw casinghead. It had a vapor pressure of seven and one-tenth pounds; in other words almost three pounds under that ten pound limit required for transportation. The gravity *Beaume* scale was 76.3 degrees at 75 degrees Fahrenheit. The over point was 88 degrees. 57 per cent came off at 221 degrees; 67 per cent at 275 degrees; 76 per cent at 356 degrees; dry at 460 degrees; recovery 83 per cent.

Q. Now where did you get that casinghead gasoline?

A. The casinghead gasoline was handed over to me and the other collaboratories in this trial by Mr. Sanderson.

Q. Do you know where he got it? A. I do.

Q. Where did he get it?

A. He got it from the Kiefer plant.

Q. Did he get any of the unblended casinghead gasoline from the Jenks plant? A. No, sir.

By Mr. Payne: I move all his evidence relating to the Kiefer unblended gasoline be stricken from the record because the evidence shows that every car shipped from Kiefer, not only those in the indictment but all the others were blended and therefore that test is entirely irrelevant in this case.

By the Court: What have you to say?

By Mr. Swacker: That is absolutely preposterous,

don't make any difference where it comes from whether Jenks or Drumright or Kiefer.

By the Court: Well.

By Mr. Swacker: Just a moment——

By the Court: I don't know whether there is any difference between the raw casinghead of the two plants?

A. I should say they are identical from my experience in casinghead plants.

By Mr. Payne: Your honor the evidence shows that the gas at Jenks is a lighter gas producing a lower gravity gasoline and therefore——

By the Court: Suppose you get——

A. May I explain that?

By the Court: Suppose you get some from Jenks and have him make the test.

By Mr. Swacker: Alright.

A. The raw gas is not necessarily the criterion of the quality of gasoline produced; that is a function of the plant operation.

Mr. Swacker: May we bring some of it in here and have it viewed right here?

The Court: No, but I will let him get some from the Jenks plant and make a test, and I will not pass on the motion in that respect until you cross examine him.

The Witness: I would suggest that the court and the jury witness this test.

The Court: Well, I think it is the safer rule to let the experts make their own tests.

Mr. Swacker: I might make this suggestion to your honor, that this was really a matter of judicial knowledge and one for the court alone to determine, and I think there is a good deal in the suggestion that it would be a very proper procedure for the court to witness such a demonstration to refresh his knowledge.

The Court: I think it is a question of fact. I will permit him to make the test from the Jenks plant.

Mr. Swacker: We made rather an exhaustive investigation of that subject, and Judge Diggs is quite full of it, and he is of the opinion it is a matter of judicial notice.

The Court: I will not strike that evidence now, but I will give them permission to make the test from the Jenks plant.

Mr. Payne: Now, will it be permissible for one of the government experts, also, to make a test?

The Court: Yes.

Mr. Swacker: We will be glad to take you along and have you witness it.

The Court: Yes, I will require that to be done, and let him make the test, too.

Mr. Swacker: We will take you out to Jenks and get the material and then see the test.

The Court: They will notify you, and let the government experts make the test with them. And I will leave it optional with you whether you cross examine him now or wait until after he makes the other test. I will let them put on another witness and proceed. It will probably save time for him to wait in his cross examination and let the other test be made and let him testify to it, and then cross examine him.

My Payne: Now, there are one or two additional questions that I want to take up, not bearing on that.

The Court: Very well. I will let you take your own course about it.

Mr. Payne: And then further cross examine him on the other matter later, is that satisfactory?

The Court: Very well.

Q. Now, the blending process; does the blending, as a matter of fact, consist of anything more than mixing two things together?

A. I should say that all of the blending operations performed in a refinery, including the blending of materials to make motor gasoline are essentially just that.

Q. Essentially just mixing?

A. But it embraces laboratory tests of the material; it embraces a knowledge of the handling of this light, inflammable dangerous material, in fact, the experience of the refinery force; it embraces the pumper's work and all regular essential refinery operation.

Q. Well, now, does it involve anything more than this?

A. I have answered that question.

Q. You have a particular quantity of material which may be somewhat higher in gravity than the particular material that you want to sell, and your idea is to lower the gravity of that material; you mix in with that a certain amount of another product which from previous experience will indicate about how much to go in, and after you mix it you take your test to see if you have got what you want, is that correct?



A. I insist the impression must not be left with the jury that this is a simple problem—

Q. Hold on, just answer my question.

A. The refinery work and experience—

Q. Answer the question. A. All right.

The Court: Read the question.

The Court Reporter: "Q. You have a particular quantity of material which may be somewhat higher in gravity than the particular material that you want to sell, and the idea is to lower the gravity of that material, you mix in with that a certain amount of another product which from previous experience will indicate about how much to go in, and after you mix it you take your test to see if you got what you want, is that correct?"

A. That is correct.

Q. Well, now, indicate just how that mixing of casinghead gasoline, with the naphtha that has been through the refinery process, that the refiner puts through in the refinery, either one or the other?

A. Well, refining, my definition of the refining is a process that prepares raw material for market.

The Court: What is the ordinary definition?

A. I think that is the ordinary definition.

The Court: The reason I asked you, you said that was your definition and the ordinary definition used in the books.

A. I think that is the definition used in the books and it is certainly not just the mixing of the two materials, the heavier and the lighter material, is the process that makes the final blending of the materials, now naphtha—now, it makes naphtha marketable, on the one hand, and casinghead marketable on the other, the one helps the other.

Q. Is it in a common—in a common sense definition refining means to remove impurities?

A. I don't believe that term is comprehensive enough, or embraces enough, because really there are many operations in refining independent of this blending which has to do with the preparation of the natural gas gasoline for the market, which will separate the impurities, remove the impurities all the way thru the refining process. For instance, the naphtha, the kerosene and the gasoline, are not finally mixed together.

Q. Now, when you say refining, don't you mean just what you say, that is, to make finer or to remove impurities?

A. I have answered that, I think, your honor.

Q. I will ask you, then, does the mixing of these two things together remove any impurities?

A. No, it doesn't in this particular case.

Q. Isn't it a mere dilution of a strong material with a weaker material?

A. Yes, that is true; I will admit that.

Q. So that under your definition, if you had a cup of strong tea and should put a little hot water in it, you would be refining it?

A. You are going too far afield; we are talking about refining.

Q. Can you mention any scientific works that refer to blending as refining?

A. I think I can, if you will give me a little time.

Q. I will give you a little time, and you may answer that later on. A. All right.

Q. I noticed in your direct examination that you used the expression natural gas gasoline at least four times.

A. I believe I did.

Q. Now, have you ever, in any of your works that you have written, used the term unrefined naphtha?

A. I don't think I have.

Q. As applying to the casinghead gasoline alone or blended?

A. I don't think I have, but I still insist that it is perfectly proper. I use the word condensate as being perhaps the best definition; and I much prefer unrefined naphtha to condensate for the question at issue.

Q. Mr. Burrell, are you the author of a paper published by the Derrick Publishing Company, entitled, "Technology of Natural Gas as Applied to Making Gasoline and Absorption Processes?" A. Yes, sir.

Q. On page three of that work did you say, "As a matter of fact, blended casinghead gasoline finds thousands of satisfied users?"

A. Yes, I believe I did, and all of the motor spirits, all of the automobile gasoline that comes out of the Gulf Refining Company, all the Gulf gasoline is blended with natural gas gasoline. The final product after they get through with it.

The Court: Will you read that again?

Q. "As a matter of fact, blended casinghead gasoline finds thousands of satisfied users."

A. As I said somewhere between a half billion and a billion gallons of that material was used last year.

Q. Mr. Burrell, did you make an address before the Engineers Club of Dayton during January, 1917? A. Yes, sir.

Q. Is this a correct transcript of it? A. It is.

Q. In that work did you say, "Natural gas gasoline is not only valuable because of the product itself, but because it is of very high grade, so high in fact that it is not economical to use it alone, but so it is mixed with low grade refinery naphtha and the so-called cracked gasoline, a great deal of which is being made at the present time?"

A. I did, and I will tell you what I meant by the term "high grade." Automobile makers have changed their carburetors as fuel became scarcer and scarcer, until today that carburetor is made to suit a much more lower grade fuel than the high grade fuel of a few years ago; so today the low grade fuel is a high grade fuel, because that high grade fuel of a few years ago will not operate an automobile satisfactory.

Q. So that in January, 1917, it was high grade fuel?

A. I should think that would be a little late. High grade was used in the sense of high in gravity. High grade really conveys a wrong impression unless one is familiar with casinghead gasoline.

Q. So that in this case according to your investigation and knowledge of the situation, is it not a fact what is refined if anything is, the low grade refinery product at Port Arthur?

A. I certainly would not admit that, one helps the other. You have each to help refine the other. The casinghead gasoline is made available for use by motor trade and the heavy distillate is made available each helping the other. One supplies the upper range in the boiling point, that is the naphtha and the other, the casinghead gasoline supplies the lower range, in other words makes an automobile engine easier to start—One helps the other.

Q. Now Mr. Burrell, is it true that what is shipped is gasoline of a very high grade, but may be properly called unrefined naphtha?

A. I would not say that. You are speaking of high grade gasoline. The material which you call high grade gasoline is really selling today in Oklahoma for four or five cents less than the regular automobile gasoline.

Q. That has been—

A. I simply wanted to make plain the conditions.

Q. Has that been just in the last few months?

A. Yes, sir.

Q. Now, wasn't that due to a particular transaction in the oil trade? A. I don't know what caused it.

Q. Isn't that due to the fact that the Standard Oil Company made some change in its internal policy?

A. I had so heard.

Q. Now Mr. Burrell when was it when you said you made this automobile test?

A. I will admit that this natural gas gasoline is a very fine material, it has helped out the automobile industry; it is very valuable but casinghead gasoline helps the naphtha just as much as the naphtha helps the other. They are invaluable to each other—You cannot say that this material is not high grade (I don't mean it is low grade) It is a very valuable commodity.

Q. Now in what respect is it unrefined?

A. It is not ready for the market.

Q. Now when was it you made this automobile test?

A. It was April 15th.

Q. Of this year?

A. Yes, sir, this year, in fact two trials were made, the first evening just a Packard was used and the next evening both a Packard and Dodge.

Q. What was the atmospheric temperature?

By the Court: Let me suggest you leave that off until you get this other and then you can go on both at once.

By Mr. Payne: That is correct, I had overlooked that. That is all at this time.

By Mr. Swacker: That's all.

(Witness dismissed)

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By a juror: May it please the court I want to ask the witness a question.

By the Court: No let's wait until he is recalled and you ask him then. He will be recalled.

Whereupon DR. JAMES B. GARNER, a witness called called for and on behalf of the defendant, being duly sworn and examined, testified as follows:

*Direct Examination of Dr. Garner by Mr. Swacker.*

Q. Dr. will you please state your name and address?

A. James B. Garner, Pittsburgh, Pennsylvania.

Q. What is your profession, Doctor?

A. Chemical engineer.

Q. In what particular branch of chemical engineering are you occupied principally?

A. With reference to natural gas gasoline recoveries.

Q. Will you please state your experiences and training in that field and the field of chemistry.

A. I received the Doctor of Philosophy degree from the university of Chicago in April, 1897, and from that time until 1914, I was mostly engaged in the teaching of chemistry and in doing consulting industrial chemical work. From 1914, to the present time I have been connected with the University of Pittsburgh or Mellon *instute*.

Q. What has been your connection there?

A. During 1914 I was on what is known as the Copper Fellowship, that is fellowship that had to do with the recovery of certain *gaseus* from smelters. In December, 1914, in connection with that fellowship I began a study of natural gas and continued that study until September, 1915, when I was appointed Senior Fellow in charge of the natural gas investigation and have since held that fellowship.

Q. Of the Mellon Institute of Industrial Research?

A. Yes, sir.

Q. Had you been engaged in industrial research work previous to that? A. Yes, sir.

Q. While you were teaching and engaging in commercial work? A. Yes, sir.

Q. And you say you graduated as a doctor of philosophy and also of chemistry and physics? A. Yes, sir.

Q. Now in that practice what have you had to do with casinghead gas condensate?

A. I have been required to from the nature of the foundation of the fellowship to study all methods of recovery of liquid products and other by products from natural gas and *there* utilization.

Q. Does that embrace this casinghead gas?

A. Yes, sir, it does.

Q. Has that been the particular subject matter of your inquiry?

A. It has not been the most particular, one of the most particular has been the absorption process of gasoline.

Q. That is *simpley* a process—

A. The absorption process.

Q. But the same—same material? A. Same material.

Q. Has your study given you occasion to study *sceintific* works on the subject? A. Yes, sir, it has.

Q. What have you done with respect to equipping yourself or familiarizing yourself with the scientific *lituerature* applicable to the casinghead gas industry?

Q. I have subscribed for all of the most known publications on the subject, I have selected all the publications issued by the United States government and I am a member of two societies which give me *acess* to more definite information possibly than the other publications.

Q. What are those societies?

A. The American Chemical society and the Natural Gas Man's Association and the American Society for the advancement of Science.

Q. I will ask you to define the term naphtha as known to the scientific literature dealing with the subject?

A. Naphtha is that liquid distillate derived from crude petroleum, lower in boiling point lower than ordinary kerosine or burning oil.

Q. That is higher in gravity or Baume scale?

A. Yes. And lower specific gravity.

Q. And in that description you are using it in its generic sense embracing all of that portion of crude oil above kerosine?

A. Yes, lighter than kerosene or lower boiling point.

Q. Is that name also used in any other sense than the specific sense?

A. It is used specifically in connection with certain grades of products, marketable products like naphtha A, naphtha B or naphtha C or painters' naphtha or stove naphtha, or solvent naphtha.

Q. Solvent naphtha? A. Yes, sir.

Q. Those are what, refined or unrefined articles?

A. They may be either refined or unrefined.

Q. And are those products subdivisions of the generic product that you have described as that of lower boiling point than kerosene? A. For the most part so.

Q. What is the exception, if any?

A. Solvent naphtha is more particularly derived from coal tar.

Q. As to the others they are all subdivisions of this naphtha fraction that you have described? A. Yes, sir.

Q. Now I would like for you to define the term gasoline in its technical sense proper technical sense?

A. The definition of the word gasoline in the strict technical sense?

Q. Yes? A. That would be the lowest boiling fraction.

Q. You started to say what?

A. Gasoline in the strict sense would be that low boiling portion of naphtha having a gravity from 76 possibly to 82 and usable for the purpose of illumination.

Q. But what further sense is it used in as an article of commerce?

A. That grade of material—I do not understand your question.

Q. You said that it is technically the grade of material which you say would be used for illuminating purposes?

A. Yes, sir.

Q. Now I say define it as known as an article of commerce?

A. My definition would require me to divide it into a number of component parts.

Q. Well do that. What I want to get at is this, if I may shorten it, is gasoline a term applicable to products of petroleum to be used for vaporization purposes? A. It is.

Q. And is it a product of the naphtha fractions of crude oil? A. It is.

Q. As used as a commercial term or article of commerce is it a finished product as distinguished from an unfinished product? A. Entirely so.

Q. You consider anything may be properly called gasoline that could not be used for vaporization purposes, such as running a car or gasoline stove? A. I do not.

Q. Are you familiar with the product that has been testified in relation to here as moving from Kiefer and Jenks and Drumright to Port Arthur? A. I am.

Q. Is that product gasoline in any proper sense of that word? A. It is not.

Q. Will you say whether or not the term unrefined naphtha is an appropriate description of that product?

A. It describes the commodity very accurately.

Q. Doctor did you participate in the test about which Colonel Burrell testified a while ago? A. Yes, sir.

Q. Did you hear his testimony just now?

A. A part of it.

Q. What is the fact as to whether or not the samples would or did run the automobiles upon which they were tested, the Packard and Dodge cars?

A. The raw casinghead and unfinished naphtha would not run the cars.

Q. Did you participate in the distillation tests before and after the material was used? A. Yes, sir.

By Mr. Gann: I thought that was going to be deferred until the test- are made.

By Mr. Swacker: You are entitled to cross examine him but every witness I am going to call now I am going to ask that question of them.

By the Court: Leave that out and I will let you put him back on the stand. You can do that by morning?

By Mr. Swacker: Yes, sir, and I am not asking him to state the tests but if he participated.

Q. Did you participate in the distillation made of the product that was used in the automobile?

A. Yes, sir, I did.



Q. Does that enable you to know that the material was the material which has been described as moving from Jenks, Drumright and Kiefer to Port Arthur?

A. I recognize it as being very similar.

Mr. Swacker: You may cross.

*Cross Examination by Mr. Gann,*

Q. Dr. Garner, you speak of gasoline being used for purposes of illumination. A. Yes, sir.

Q. Isn't that generally known as gas machine gasoline?

A. It is.

Q. And isn't most of the gas machine gasoline sold today casinghead? A. No, sir, I don't think that is so.

Q. Isn't it or not? A. I don't know as to that.

Q. Isn't a large portion of that?

A. I do not know that.

Q. Isn't there another kind of gasoline called export gasoline? A. Probably is.

Q. Do you know the gravity of export gasoline?

A. I do not.

Q. Do you know whether it is made from casinghead or not?

A. I do not know for certain but I believe that it is.

Q. You believe it is? A. Yes, sir.

Q. Then it is gasoline, isn't it?

A. Made from blended materials, yes, sir.

Q. The gasoline to be used in a motor car is not the only kind of gasoline, is it?

A. In the common acceptance of the term, I believe that ninety-six per cent of all the materials used and called gasoline is used in internal combustion engines with suction carburetors.

Q. The term, however, embraces many kinds of gasoline, does it not?

A. Many kinds of gasoline—if you will say specifications of gasoline, say many specifications of gasoline.

Q. They are blended gasolines, aren't they?

A. Practically all of them are blended gasoline.

Q. And cracked gasoline?

A. No cracked gasoline on the market.

Q. Then cracked gasoline is not gasoline?

A. It is not gasoline.

Q. What is it? A. It is unrefined material.

Q. Is it unrefined naphtha?

A. Probably unrefined naphtha, depending upon its characteristic.

Q. Is all refined gasoline unrefined naphtha?

A. It is not, no, sir.

Q. In your definition of gasoline, you say that it is composed of the lowest boiling fractions and the gravity ranges from 76 to 82 degrees?

A. I said that was a strict technical definition of gasoline.

Q. Well, if casinghead gasoline composed of the lowest boiling fractions has a gravity from 76 to 82 degrees, is that also gasoline? A. It is not

Q. Why not? A. They are fundamentally different.

Q. You say it is composed of the naphtha fractions; what are the fractions in casinghead?

A. You take the casinghead you speak of and you distill it and carefully plot your curve——

Q. You are not answering the question.

A. That is a means to the answer. And you carefully plot your curve and then do the same with the material you ask about the curves are entirely different, showing that the amount of the various materials are different. The substances, therefore, are not identical. They are entirely different substances.

Mr. Gann: I ask to have the answer stricken out as not responsive to the question.

Mr. Swacker: That is absolutely responsive.

The Court: I will let the answer stand.

Q. Is it not specifically—is there not specifically names of naphtha fractions, naphtha fractions viewed from a chemical standpoint? A. Varies in amounts of *penchane*, hexane, and heptane and,——

Q. What are the naphtha fractions present in so called straight run refinery gasoline?

A. Probably a trace of *penthane*, relative and the larger amount of hexane, heptane, octane, nonane, and probably a small amount of hydro carbons or the hydro carbons contents.

Q. Is it not a fact that the naphtha fractions,——

The Court: The names indicate certain qualities, do they?

A. No, names indicates in the particular substance the relation, the amount of the hydro carbon or the amount of hydro-carbons relative to the amount of the constituency in the substance named, the exact amount of each compound in this material or blend, it has to be ascertained by experiment.

The Court: Go ahead.

Q. Is it not true that the hydro-carbons which you have

just named as being present in the casinghead gasoline and straight run gasoline are the same family?

A. I have not named those of the casinghead gasoline.

Q. What are they you have not named?

A. I answered your question on the gasoline refined for vaporization purposes.

Q. What are they in casinghead?

A. The casinghead is the mixture of the *profane*, butane, *rsobutance*, pentane, hexane, with a little heptane.

Q. Isn't it true in both instances, they are the same series of hydro-carbons of the paraffin series?

A. That does not make any difference.

Q. Well, isn't it true, as I have asked the question, that they both are members of the hydro-carbons of the paraffin series?

A. So is natural gas, but you wouldn't include it as a gasoline.

Q. Do you know how the term gasoline came to be applied to this product of casinghead?

A. I know how the word gasoline arose.

Q. I mean the term as to casinghead? A. I do not.

Q. You don't know it was called gasoline because it resembled gasoline more than anything else?

A. No, I do not know that is the case.

Q. Take for instance, blended gasoline from the refinery. The gasoline itself may have different members of hydro-carbons of the paraffin series?

A. And other series also.

Q. Would gasoline taken from the same plant, from three or four different plants, and blended together, have the identical proportions of these hydro-carbons that you have just named?

A. I don't know; I don't understand your question, sir.

Q. Take refinery gasoline which is blended with the— with a little naphtha, some casinghead, and put on the market as gasoline. A. Yes, sir.

Q. It contains a certain series of hydro-carbons, which are easily identified? A. Yes, sir.

Q. Take another batch from the same refinery, but out of different tanks, perhaps; would you find the same chemical constituents in that mixture as in the first one?

A. I would not know unless I would test it.

Q. Well, what is the general experience?

A. I do not know what the experience is. I know what my personal experience is.

Q. What is your personal experience?

A. My personal experience, they would be the same.

Q. Identically the same.

A. Not identically the same, but be used for the same purposes.

Q. Is casinghead gasoline refined? A. It is unrefined.

Q. Why do you say that?

A. Because it is not fit for the use of gasoline.

Q. Not fit for illuminating purposes?

A. Uses for which gasoline is used.

Q. All gasoline or just motor gasoline?

A. The broad sense of the word gasoline, the word the public understands as gasoline.

Q. Do you limit the refining to the use to which the article is put?

A. Refining is always termed by the use of any commodity.

Mr. Gann: That is all.

The Court: Anything further on re-direct examination?

Mr. Swacker: I might one or two questions.

*Redirect Examination by Mr. Swacker.*

Q. Were you in the course of preparation of some curves to demonstrate this fundamental difference between these things at this time? A. Yes, sir.

Q. Are these the curves that you were preparing?

A. Yes, sir, these are the curves.

Q. Can you have those completed by tomorrow?

A. Yes, sir.

Mr. Swacker: I think we had better save offering them until then. We may offer them tomorrow, after he colors them up.

The Court: Very well.

You may be excused.

Gentlemen of the jury, you will be permitted to separate under the usual instructions and go—we have made pretty good progress today—until tomorrow, at nine-thirty.

Whereupon court took a recess until nine-thirty o'clock a. m. tomorrow morning.

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MORNING SESSION.

April 20, A. D. 1920, 9:30 o'clock A. M.

Whereupon Court having convened at the hour of 9:30, pursuant to adjournment, and the jury having been called and

all found to be present and counsel for the plaintiff and counsel for the defendant announcing to the court they were ready to proceed with the trial of this case, the following further proceedings were had, to-wit:

Mr. Swacker: Last night, through a misunderstanding, the government and our people failed to make connection to get the samples. Now, we are ready to send out, and if they will nominate somebody to go out and bring in a sample. I asked them this morning, but they said at that time they could not get in contact with anybody to go out.

Mr. Gann: We would like to explain the circumstances to the court. Perhaps it would be well to do so not in the presence of the jury.

The Court: Very well, we will do that at noon, when we send the jury out.

Mr. Swacker: May I ask that Colonel Burrell be excused now, or will you need him?

The Court: Mr. Burrell was to be recalled.

Mr. Swacker: Yes, sir.

The Court: And you are excusing him?

Mr. Swacker: Just for an hour.

The Court: Better have some understanding now about the number of expert witnesses you are going to use.

Mr. Swacker: Just have two more,—I mean three more, after Dr. Schock.

The Court: How many have you already used?

Mr. Swacker: Three.

Mr. Payne: No, four.

Mr. Swacker: Three.

Mr. Payne: No, four.

The Court: No, only three: Mr. Tabor, Mr. Burrell and the one from the *Melon* Institute. I will let you use three more, making six. Of course, the other side will be limited to that number.

Whereupon EUGENE PAUL SCHOCK, a witness on behalf of the defendant, having been first duly sworn according to law, was called to the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Swacker.*

Q. Dr. Schock, will you please state your full name and place of residence?

A. Eugene Paul Schock; Austin, Texas.

Q. What is your occupation, Doctor?

A. I am a professor and chairman of the School of Chemistry and Chemical Engineering and head of the division for chemistry of the Bureau of Economical Geology, of the University.

Q. What, of the University of Texas?

A. Yes, sir.

Q. What has been your training and experience, Doctor, in the field which you now practice?

A. I received the degree of civil engineering of the University of Texas, the Degree of Master of Arts of the same institution.

Q. When?

A. The first in 1894, the master of arts in 1896, the Degree of Doctor of Philosophy of the University of Chicago, in 1902, Majoring in Chemistry. I have been connected with the University since 1897 and have been there excepting a period of a total of nearly two years during which I was absent on leave.

Q. What is the scope of this particular field you occupy and what specialties do you have if any?

A. The teaching of chemistry, I have charge of its teaching, the teaching of chemical engineering, the chief of which is technology of petroleum.

Q. Why is that?

A. Of all of the chemical industries developed in Texas, Petroleum ranks foremost. In addition to that, as head of the division of chemistry of the bureau of economical geology I am directed to give aid to the industries in the state, chief among which is the Petroleum industry and we not only have a laboratory but we also have a small refinery and work on various crude oils in order to determine the best method of refining on demand from various parties in the state.

Q. Do you practice independently of your teaching in connection with this industry as well?

A. I am permitted to do so to some extent and do so.

Q. And the University itself undertakes to aid along that line? A. It does.

Q. Using your services to that end?

A. Yes, sir, I am in charge of that work.

Q. Are you a member of any technical societies?

A. I am a member of the American Chemical Society and at present a member of the Council of that society. I am a fel-

low of the American Association for the Advancement of Science and a member of the American Electrical Chemical Society.

Q. Does your work require to keep abreast of the current literature, technical literature on this subject?

A. That is one of the prime requirements, because the petroleum industry, in order that one might give aid to people over the State, one must be abreast of the times and naturally senior students who are directly under my charge studying the petroleum industry must be prepared in such a manner as to step right into the industry. So it is required of me to be as prepared up to date as I possibly can be.

Q. To what extent are you familiar with technical literature dealing with this subject?

A. I am conversant with the latest and standard text books and the bulletins, technical papers published in the various journals.

Q. Have you written anything yourself?

A. I published a bulletin recently on the review or analysis of raw materials, particularly rocks and minerals, from Texas sources, I have shown the presence of ozokerite in the shale oil fields which was published in the Journal of Industrial and Engineering Chemistry in 1917, and I have published possibly eighteen or twenty papers of investigation on various phases scientifically pure and applied.

Q. Does your research work embrace the casinghead industry as well?

A. Yes, sir, it does; we expect to do as much for that as possible.

Q. Now, will you define the article of commerce known as gasoline?

A. Gasoline is a material or substance that is not definable in just a few words. We must—in order to define it, we must consider its use, and I take that as my basis for a definition. Gasoline is most used in the ordinary automobile, some is used in gasoline torches, used by plumbers, and so on. Some little is used in gasoline stoves. It is primarily obtained from petroleum.

Q. Before you go into its origin can you indicate by some general quality its character as an article as applied to its use?

By the Court: I would like to ask this question.

By Mr. Swacker: Yes, sir.

By the Court: What was it called before it was used in automobiles?

A. I be——

The Court: What was this article?



A. Now used?

By the Court: What was it called before it was used for that purpose?

A. The material used today under the word gasoline is not identical with the material that was called gasoline years ago because—

By Mr. Swacker: Just a minute—his honor's question is what the material was called previously which is now used in automobiles.

By the Court: If it was used, did it have any name?

A. Collectively, I suppose it would be called—it would come nearer being called naphtha.

By the Court: What was it called then, automobiles have been in use only about twenty years?

A. I want to explain, your honor, that the particular materials you now use was probably not in the market twenty years ago.

By the Court: If it had a name, I want to find out that? You announced the rule?

A. Yes, sir.

By the Court: Automobiles are of recent origin, if gasoline existed practically in the same state now as before, then I want to know if it was called by any other name?

A. There is a gasoline that existed at that time. It was used in gasoline stoves and that was and did not differ exceedingly from the present gasoline, but in another way it does. The quality and the volatility has been steadily lowered in order to meet the greater demand that at one time the time that your honor refers to gasoline it was a product that was not exactly the same, I won't say that twenty years ago gasoline was a different material but it was a gasoline that had a lower boiling point, was more volatile as a whole than the present gasoline.

Q. What was the material which is of the quality now used in automobiles, called, if and when finished, as a finished product before the same was used by automobiles?

A. Before the use of automobiles came in, you mean?

Q. Yes, sir.

A. I think the word naphtha would have been applied to it rather than the word gasoline.

Q. Now, I was asking you of the general quality incident to any of the uses—of the general character of it, character of use of gasoline? A. Gasoline at that time?

Q. No, not at that time; any time, gasoline?

A. Gasoline was always used to be vaporized and served as a fuel. Vaporizing previous to burning being essential to a great extent; that is, it must vaporize at a comparatively low temperature and vaporize wholly.

Q. Vaporization was the means of use of it in whatever use?

A. Yes, sir, for fuel purposes, comparatively low temperature.

Q. You started to define gasoline by its use in the first instance, now I presume you were going on to define it by its characteristics of some other description than use, its origin I think you started on?

A. As I said gasoline cannot be defined in one word. We will say first the origin, consider the origin, gasoline is a material derived from petroleum. It is a liquid volatile, inflammable, but so made up and is a mixture of a number of substances, this material being in such proportion that a part, and a part only, will volatilize when air is blown through it, as is done in the automobile, ordinary automobile carburetor. The amount thus changed to strict gaseous form, as distinguished from a mist or rain, the amount that is changed strictly to a gaseous form must be not very large, because upon this depends the explosiveness or starting of explosion of air and vapor mixture limit of the explosibility as far as quantity or amount present as vapor is concerned or a little narrow.

Q. Of what part of petroleum oil is it derived?

A. It is derived from the portion, from the first portion that comes off of the crude product.

Q. What is that known as?

A. The first portions collectively are known as naphtha.

Q. Is that the proper technical name of it? A. Yes, sir.

Q. Now, is there a degree of interchangeability between, of the words gasoline and naphtha?

A. There is, but it is a little one-sided, namely, all gasolines can be called naphtha, but,—well, now, let's see, I don't know that I said exactly what I meant; I mean this, the gasoline is a particular naphtha, the word gasoline designates the naphtha of certain properties, as I understand it.

Q. Whereas the word naphtha means,—

A. The word naphtha designates any volatile, inflammable liquid, hydro-carbon mixtures, which, if we add the prefix in the name naphtha, means and I believe it is derived from petroleum. The same term however is also used in tar industries.

Q. Referring to this industry—is it the fact that naphtha

is a proper name of any gasoline but all naphthas are not necessarily gasoline? A. Yes, sir

Q. Now, are you familiar with the materials—you have been present during this trial? A. Yes, sir.

Q. Are you familiar with the material described as being shipped from Kiefer, Drumright and Jenks to Port Arthur, Texas? A. I am, I have examined it.

Q. State whether or not that is gasoline. A. It is not.

Q. State whether or not it is appropriately described by the term "unrefined naphtha."

A. I consider it appropriately described.

Q. Now, Doctor, did you witness the tests that were described by Colonel Burrell and Dr. Garner?

A. I have reference to two sets of tests.

Q. Both the distillation test and an effort to run a car with it? A. Yes, sir, I was present.

Q. Was your observation the same as Dr. Burrell and Dr. Garner?

Mr. Payne: If the court please, I object to this test, on the ground it was made after the indictment in this case was returned and after the trial had started, and it is incompetent.

Mr. Swacker: We had that subject up yesterday, but I will cover it again.

Mr. Payne: On the general theory that what occurs after the commission of a crime is not evidence in relation to the commission of that crime.

The Court: Have you any authority on tests, and things like that, by experts?

Mr. Swacker: Blood stains are tested months afterwards, and lots of other things.

The Court: I am asking him.

Mr. Payne: I have none at hand.

The Court: I will permit him to testify, then. Your objection is overruled.

Q. Doctor, does your scientific knowledge of this material enable you to say that what was shipped during the period from December, 1916, to March, 1919, is the same material coming from the same wells today? A. Yes, sir.

Q. So that a test made with such material today would indicate the same results as though made with the material actually shipped?

A. Absolutely, the same, yes, sir.

Q. Now, I don't think you answered my last previous question before the objection. That is, whether you observed

the results of those tests, and whether your observation was the same as that testified by Dr. Burrell and Dr. Garner?

A. They were absolutely identical of what was observed by those gentlemen. The car was filled with raw casinghead gas in one case in particular, being careful——

The Court: I will exclude the test as to raw casinghead gas.

Q. Just confine yourself to the blended material.

A. Particular care being taken to empty the storage tank and the carburetor completely, an operation that had to be done rather carefully. Particularly one case the tank was dripping only, but a careful inspection of the tank still showed that it contained some of the original gasoline; so that we used a rubber tube syphon to empty it thoroughly. Then we proceeded to fill the tank with this material, unrefined naphtha, and we found the car could not be started. Then we primed the carburetor, which enabled it to get started; all got into the car, and the car ran smoothly for a distance of 100, 150, possibly 200 yards, and stopped; couldn't be budged.

Q. What did you prime it with?

A. Primed it with some curb gasoline, we found in the car to begin with and we also run the car out on the gasoline and as far as I noticed nothing was done to the car in any way that was unfair and after we found this material would not run the car we emptied the storage tank and we filled the tank with curb gasoline and without touching the carburetor we ran the car smoothly back home.

Q. What make of car was that?

A. Packard on one trial and a Dodge on another.

Q. You spoke of it running a short distance, one hundred or two hundred yards, I will ask you if that priming would carry it that distance itself?

A. Yes, sir, that was the idea.

Q. I say, did the engine even run, to say nothing of the car? A. The engine did not run.

Q. Dr. I will ask you if the State of Texas has a statute covering the qualifications of the material that may be called gasoline? A. It has.

Q. I will ask you to look at this and see if you can identify it as being such statute?

Mr. Gann: I object.

The Court: On what theory,—they had one in Oklahoma that was in force about ten or fifteen years passed by the old territory law, they say in it—what constitutes gasoline,——

Mr. Swacker: Don't say that constitutes gasoline, that is not the theory, what it does say is with reference to declarations as to safety and prohibiting it to be sold for domestic purposes and the last amendment last year the Corporation Commission was empowered to formulate further regulations of safety we intend to offer the proof as to that,—

The Court: On what theory is this admissible?

Mr. Swacker: In it this statute goes much farther than the Oklahoma statute and making it absolutely prohibitive to call this gasoline either by the dealer or the carrier and defines the only material—

The Court: Yes, but the state law would not be applicable to interstate commerce.

Mr. Swacker: It is by the terms applicable and I think under all the circumstances might be valid as a police power act, but I am not urging its legality as to that but as the evidentiary effect that this is not gasoline.

Mr. Diggs: We think if the court please, it is admissible on two other theories; this stuff is shown to be sold in Texas by the Texas company who is familiar with the terms of its name, consequently with the use, it was to be put to we think, it is admissible on another theory, the same theory that your honor let the statements of the employees in at the plant, that they called this particular article gasoline. Now, I say that is admissible to show what people generally, think of it in Texas.

The Court: When was that law passed?

Mr. Swacker: At this recent legislature.

The Court: That has been since these rates were made?

Mr. Swacker: Of course since the rates were made, yes, sir.

The Court: Let me see that.

The Court: I will hear from the other side.

By Mr. Gann: May it please the court, this would cover a large field if this class of testimony were permitted and it would require the government to go over the continent to show that gasoline in one state was such and such and gasoline in another state would be such and such specifications. Our position is, what is gasoline in Alaska may not be gasoline in South Carolina. We—this was for the purpose of sale in a state; for a certain purpose. We

don't think that it is the test, whether this is or is not gasoline.

Mr. Diggs: Your honor, do you care to hear from us?

By the Court: I am inclined to think it is not competent, but——

Mr. Diggs: We outlined certain things to your honor the other day.

The Court: This act was approved on March 24th, 1919.

Mr. Diggs: Yes, sir.

By the Court: And would become effective 90 days after date, April, May, June, so it wouldn't become effective until after the last day in this indictment.

Mr. Diggs: Yes, sir.

The Court: I think that would absolutely eliminate it.

Mr. Green: Pardon me for a suggestion. It is our position that this statute is simply the crystalization——

The Court: No, but it is within the power of a concern to go and have a law passed to make it a measure of evidence in the trial of a case.

Mr. Green: If there is anything like that in this case, that would be a different proposition.

The Court: But you look at the possibility; that is the rule. I am not assuming that incident and I do not mean for the jury to think there is any imputation, to think any such thing has been done in this case. But you look at the possibilities. Just like the other morning when evidence was offered, when I can fix a rule by which I can see absolute safety, I was going to let it in if it came within the absolute rule—I will hear you.

Mr. Green: I just wanted to make this suggestion to the court, and that is this: it is our position that the statute there shows for itself that the standard being used here by the government itself is being adopted in the State of Texas following the government's lead, it says that this is gasoline. This defendant is a resident of the State of Texas and must take notice of its laws, and this being a criminal case, that is one of those circumstances that we feel should be allowed to go to the jury, not that this law is absolutely binding, but before the matter could be enacted into a statute, that line of thought must have crystalized to an extent as shown by the Bureau of Mines and

later certainly did appeal forcibly to the authorities for the State of Texas and they put it in statutory form. And while this is prior to the date alleged in the indictment—

The Court: You mean subsequent?

Mr. Green: I say subsequent, but it is prior to the return of the indictment, and it occurs to me that it might not be without any imputation on our part, that it is not altogether right to deprive the defendant by stopping the date of the offense many months before the indictment is returned; in other words, this indictment is returned in November and the last offense alleged is either in March or in May. Now, that would absolutely deprive us of facts that ought to go to the jury.

The Court: I don't think this evidence is competent.

Mr. Diggs: Before your honor rules, we would like to state our purpose. We think the only possible ground on which to determine is by the general custom controlling the whole country. What is the custom of the country can be proven by its laws and usages, for instance the very authority handed by the gentlemen to your honor applies to a locality and did not extend to the whole country. When you look at it and determine all the circumstances—the United States Supreme Court has held that you can look to the different laws of all the states in the Union for the purpose of determining the general view of the government, namely, the expression of the will of the people and the proper exercise of that view to know the police powers. If we can look to the general laws which represent, at least are supposed to represent the will of the majority of the people, as to what the very views of the government is, we can look to it for the purpose of determining the nature of an article. If a person who testifies that he doesn't know enough about the article about which he testifies is a certain thing to give a single element of which it is composed, if that be evidence to go to the jury, it must be that a body representing a state that sets out their knowledge of the matter by setting out its constituent elements is entitled to weight.

Mr. Diggs: We think it is also evidence in rebuttal, showing the custom of what is and what is not gasoline if evidence as to the custom of calling a certain thing gasoline is to stay before the jury. We think in addition to that, the point made by the government here now is correct, that they can call—can go for the purpose, if you can determine the nature of this article by representations,



what any state has declared gasoline is not only competent, but very important evidence in the case.

The Court: Have you any authorities? I would like to see them.

Mr. Diggs: The only authorities that could be said are directly in point, I am taking the one case from Noble County State Bank in this state, in which case the court held that they could take judicial knowledge of what the law of the states are in reference to the bank guarantee purchase of it, and properly and justly exercise police powers. If we can look to the habits and the customs of the people for the purpose you have described, you can look to determine what the article is they use.

In the same volume presented to your honor in the case the other day, if you will look at the general expression of merchants to determine what things described a certain thing enacted by Congress to be a toy, if in fact it is not a toy, the article of commerce in common use and therefore should pay tariffs at a different rate than that named in the act itself, we can certainly look to the Act to determine what a certain article is considered to be in common use. It is the same. I have no specific case in mind on this exact point I am now making, but there can be no difference in the principle if there is an application only.

The Court: Yes, it says for the purpose of this Act, the word gasoline where used alone or connected with other words is applicable only to the petroleum product defined that the following minimum required,—that means by—

Mr. Diggs: If the official act of a man like Colonel Burrell, who would write a book, would be considered evidence of proper designation of a certain thing, certainly what the legislature thinks, and enacted into the law of a state carries, if not scientific knowledge, as equal general knowledge of what is considered to be the general use.

The Court: I will allow you to prove the rules of the Bureau of Mines, I permitted that to go to the jury. I have serious doubts about this. I will not permit it now. I will not rule on it now.

Mr. Green: In order to keep the record straight, we will preserve our exception.

Mr. Diggs: He says he is not ruling on it now.

Mr. Green: Alright.

Mr. Swacker: Your honor used the words, "for the purpose of this Act," I would like to call your attention to the preceding Act embracing all sales and transportation.

Mr. Payne: I object.

Mr. Swacker: Just a moment. He may handle what material in the State of Texas.

The Court: I will consider it and rule on it later.

Q. Did you state a part of your work embraced the art of refining itself, aside from the chemical aspects of the industry?

A. Yes, sir.

Q. You say you maintain and operate a miniature refinery for treating and demonstration purposes? A. Yes, sir.

Q. Will you say whether blending is a part of the art of refining, and if so, what part it is?

A. Blending is an essential operation in the production of at least two and probably more commodities obtained from a refinery, and in the operation and in the production of lubricating oils, nearly all refineries produce a few stock oils to begin on, and then blend these in various proportions, in order to meet the demands of the public for certain grades. In the same sense, I should add that the refinery is asked for a particular product, he seeks not only to blend it to meet the customers brand, but to dispose of all of his product so it is natural—

Mr. Gann: I object. He asked him about lubricating oil, which is not a test and not a part of this case.

The Court: I don't see it is competent.

Mr. Swacker: The only thing, I asked him what part blending played in the art of refining. He says it is not only a part but an indispensable part of the refining.

The Court: I am not going to permit the evidence, only so far as it relates to the gasoline.

Mr. Swacker: All right.

A. Blending is an essential operation in the gasoline today because certain refineries run gasoline—in an up to date refinery that is not only one of the materials that it has to dispose of. We deal in most refineries with what we call still gases, namely, gases that are not condensed during the distillation produced, not condensed in the water containers, and is to be condensed by compression and most excessive cooling. The product thus obtained is treated in various ways, and, of course, today there are two sources, namely, casinghead gas and cracked material, so called. All of these have to be dis-

posed of in such a way that the material on hand may not be used up, but particularly to produce material suitable for the public. Now, the proportions of the volatile, to the less volatile in the gasoline is a very important and a very intricate matter. You take—about the only way to get at it is to guess what to do, what you have on hand, and make the mixture and then take an examination of the mixture and make a distillation and such other tests as may be necessary to see if it meets the demand, and to see if it will fill the requirements of the gasoline and the other constituents named in certain amounts. I was favorably impressed with this in my school when I put this problem to the students and gave them that——

Mr. Gann: I object.

The Court: Yes.

Mr. Swacker: I think that is not competent, your honor.

Q. Doctor, will you please state whether the term unrefined naphtha is not a comprehensive term merely limited to this material that was shipped to Jenks, Keifer and Drumright from Port Arthur?

A. Why, it is more of a comprehensive term, it would not designate this material only.

Q. Would it embrace such material as a topping plant produces? A. I would say so.

Q. Would it embrace what is known as light end distillate?

A. Yes, sir.

Q. Doctor, have you any interest in this controversy?

A. No, sir, none at all.

Q. Are you interested in the Gulf Refining Company, at all? A. Not in any manner.

Mr. Swacker: That is all.

*Cross Examination of the Witness by Mr. Payne.*

Q. Referring to the automobile test, that you made, did you see the sample that you used, extracted from the tank in the casinghead gasoline plant? A. No, sir.

Q. Who gave you the samples?

A. The samples, as near as I can locate who gave them to me, were given to me by Mr. Sanderson.

Q. Did you make any chemical analysis of the sample before you put it into the car?

A. Chemical analysis so called, made a physical examination, but not what you would call a chemical analysis.

Q. Do you know what that sample was? A. Yes, sir.

Q. How do you know unless you made a chemical analysis of it?

A. I said I did not make a chemical analysis as you would call it, we determined the physical properties of it though.

Q. What analysis did you make?

A. Determining the vapor tension, the gravity and distillation curve with great care.

Q. Doctor, you don't call that a chemical analysis, do you?

A. We call that a set of tests sufficient to identify the material.

Q. Now, you don't call that a chemical analysis, do you?

A. I said we call it taking the physical test, I examined that, that is what is meant by chemical.

Q. That is a mere physical examination. You don't call that a chemical examination, do you? Categorically?

A. There are many people call it that. It is usually done by chemists—

Q. Answer my question, do you call that a chemical examination?

A. I have many times. When I am more *acturately* stating, I call it physical test.

Q. Now, isn't it a fact that your gravity and distillation tests would not determine the true material of the fluid?

A. The gravity and distillation tests—

Q. Yes?

A. Would not determine the true nature of the fluid in all senses.

Q. As to what it actually was?

A. As to whether it was derived from petroleum.

Q. No, as to what it is?

A. I would certainly say they could with such incidental observations. A man doing the work actually gets, such as to the odor and so forth, to an experienced man, it absolutely identifies the material.

Q. Now isn't it possible that the sample that you attempted to use was not at all the sample from the Gypsy plant, so far as you know?

A. That is correct. That could be the case because the nature of a material is as to the physical or chemical purposes—might be derived from a large number of sources.

Q. In other words, all you know is you were given a sample of something and you put it into a car and tried to run it and it wouldn't run?

A. And in addition to that I examined it.

Q. You examined it physically?

A. Physically or chemically analysis in the ordinary sense of the word.

Q. Now, what would be the test of a gasoline that would run a car?

A. What would be the test of a gasoline that would run a car?

Q. That is my question, sir.

A. First of all the running of the car would be the test, the direct experiment.

Q. Alright, go ahead?

A. Now, from experiment and comparing that to the distillation curve we get a comparison, get a relation from which we can judge, not very closely now, I wouldn't attempt to say very closely, but what will run a car and what won't but, when there are wide differences you can tell from a distillation curve and the gravity——

Q. State what——

Mr. Swacker: Let him finish the answer.

Q. State what those tests were.

A. Just the distillation and the gravity.

Q. What gravity or initial point, what end point will run the automobile?

A. If we have a material that will begin to distill at low, at least 140 degrees Fahrenheit, that will distill twenty per cent. at least, at 221 that will distill 45 per cent.; at 275, that will distill at least ninety per cent at 356, and dry point not exceeding 428 and the minimum recovery as we call it of 95 per cent., such a material will run a car.

Q. Now, must it have the initial point as high as 140?

A. That is the upper limit; it must at least begin to distill at that temperature. It will begin to distill lower.

Q. So if you had the initial boiling point as low as 100, that would be all right? A. Yes, sir.

Q. Ninety?

A. Taken by itself that would not mean very much, but I will pass that.

Q. Eighty?

A. You are now getting in the region where it becomes to be dubious.

Q. Seventy?

A. That itself will not decide the question. Suppose it has, it drops—it begins to drop over a little at seventy, beginning to distill, and get 95 per cent. recovery, then the material will run the car.

Q. Now, has the recovery,—does it have anything to do with the propelling power of the gasoline?

A. The recovery is one of the most essential indications of the mixture.

Q. You mean the gasoline that would not have a recovery of 95 per cent, would not run an automobile?

A. I will not say that, because, as I said, to begin with there are wide differences only a man with experience can distinguish between.

Q. Is not the recovery test more one of economy than anything else? A. No, sir.

Q. Is it not a fact that in some specifications they require a certain minimum recovery, so that otherwise the gasoline would not be economical because of its rapid evaporation?

A. I don't take it so.

Q. Has that anything to do with the propelling power?

A. Indicates the per cent. of very low boiling and hence more condensable and hence more loss of material in the distillation, and that is very essential.

Q. Going back to this automobile test, did you examine the fluid for water contents? A. Yes, sir.

Q. Is it not a fact that a little part of water put in the gasoline will prevent the car from running?

A. That would depend entirely whether—where the drop of water gets.

Q. What?

A. That would depend entirely where it happens to be located. A drop or two of water in the carburetor might do a great deal of damage. I have not tried that particularly, but I have had a drop of it—got a little water in the carburetor once or twice.

Q. I don't believe you answered the question; would the presence of water in gasoline prevent it from running a car?

A. How much water?

The Court: Any water put in the gasoline prevent it from running the car.

A. Enough water would; water in drop form might in the carburetor. It would, naturally, interfere with the running of the car.

*By Mr. Payne.*

Q. Did you make an examination of the gasoline to find out if it had water in it?

A. Physically free from water.

Q. Did you make the test?

A. Yes, sir, we observed the gasoline very carefully.

Q. Were you looking for water?

A. We looked to see the gasoline was pure so far as the water was concerned.

The Court: How did you make the test for water?

A. You asked—I asked for the quantity, and I was not told how much—

The Court: How did you make the test?

A. To test—one of course, is the fact that the sediment in water will settle and actually dissolve water, will not interfere with the running of the car, and if you want to determine that, that is a very difficult matter to determine, and that would have to be done by having a chemical reaction in the gasoline. It could be determined on the other oils or heavier oils than gasoline with comparative ease; more so than gasoline. To determine that in the heavier oils you put it in the steam still and the lighter oils are carried off and the water with it; but in such light oils as gasoline it can not be done that way, and is not ordinarily done that way.

*By Mr. Payne.*

Q. What would you say was the boiling point of the alleged gasoline attempted to be used?

A. The initial boiling point?

Q. Yes, sir. A. At least 140, must begin to boil—

Q. That you attempted to use on this test?

A. On this test?

Q. Yes?

A. I would have to refresh my memory. This started to distill at 85.

Q. And what was the gravity?

A. The gravity was 73.3 degrees Baume' at 60 degrees.

Q. Now, Doctor, if a product has a low boiling point and a 76 gravity, or 73, what did you say?

A. This was 73.3.

Q. A gravity of 73.3, why will it not explode and run a car?

A. In the first place, that is all the data you can give me on it?

Q. Is that all you have? A. No, sir, I have the end point.

Q. What was the end point? A. The end point was 400.

Q. Now, has the end point got anything to do with starting a car?

A. Nothing to do with starting the car.

Q. Now, answer my question. I gave you the boiling point, I stated a low boiling point and about the gravity?

A. And the recovery.

Q. No. A. I must have the recovery.

Q. Can't you state where a product is of a low boiling point and a 76 gravity, can't you state whether it will explode and start a car, and if not, why not? A. Because—

Q. Answer yes or no, first.

A. I can't tell from that whether it will start it or not.



I can conceive distillation with just that data that will drive a car.

Q. Now, why wouldn't the alleged gasoline that you attempted to use in that test run the car?

A. Because the amount of material that distills at low temperature and at distillation even below this temperature is never condensed, is judged by the first drop that is found, but when you distill at lower boiling, the material is not condensed at all. You can see clouds of it pouring out of the condensor tube. That distillation is indicated by the loss, the recovery being less than 95 per cent., or whatever the recovery is, the amount that is short.

Mr. Payne: That is all.

*Further Direct Examination by Mr. Swacker.*

Q. Doctor, if there were water present in the gasoline you used in the test, to such an extent as would prevent the operation of the car, would that be indubitably in evidence in the distillation test that you made? A. It would.

Q. So that you can say positively there was not water present in it in that way from the distillation test that you made? A. Yes, sir.

Q. Now, if there had been water in the carburetor, would it not have interfered with the car running on the refinery gasoline as well?

A. Yes, sir; besides that we drained the carburetor.

Q. But if the failure to run was due to water in the carburetor, it could not have run on the curb gasoline, either?

A. No, sir.

Q. Now, you were asked, was not allowed to complete your answer with relation to curves, will you explain why it is necessary for you to know what is the curve of the gasoline before you can tell whether it will run a car?

A. Because the gasoline that will run a car, must be made up of a mixture of continuous or a mixture of substance which will give a rather continuous curve, as we call it, extending from the lowest to the highest in order that this mixture, when it is sucked or drawn up with the air, drawn through a carburetor, may partly change to a gas, and the remainder be drawn along, a fine mist, as if we used the mixture of lubricating oils and casinghead gasoline, we could have any gravity we wish, and as we drew, use it in the car, particularly with, what we might call wild gas product, as we drew air through there we would get a vapor only, and a very little mist because the lubricating oil would be too heavy to be drawn along, the vapor would be too rich, could be easily too rich because the per cent

of vapor and air, the upper limit within which no explosion will occur is very low, and if that per cent. is easily exceeded, on the other hand the lubricating oils, it would be drawn along—

Mr. Payne: I object.

The Court: Yes, I think that is.

Mr. Swacker: He is speaking of the curves on gasoline that composed of the lubricating oils, just to demonstrate that it can be seen by some of the curves that it is impossible to run a car—

The Court: I don't understand lubricating oils to be in this case.

Mr. Swacker: No. He is demonstrating why it is impossible to run a car on certain curves in certain instances.

The Witness: Your honor, will you allow me to explain?

The Court: No, I think that is going too far.

A. Well—

*By Mr. Swacker.*

Q. Now, then—

Mr. Diggs: Please note our exception.

*By Mr. Swacker.*

Q. So far as identifying this material as that described as having been shipped to Port Arthur, would a technical analysis enable you to one bit better determine or compare it with any such description of the commodity you have shipped to Port Arthur and this article about which evidence has been given? A. It would not.

Q. Isn't it a fact the material is composed of petroleum, hydro carbons?

A. The relation of the gravity to the boiling point indicates that all right, and allows one to draw the conclusion.

Q. Now, would it be of any use to know the chemical properties in determining this you have heard in evidence, to identify this, after the evidence you have heard?

A. It would not be necessary.

Q. Would it be of any use? A. I can see no use.

Q. That is all.

The Court: That is all.

(Witness dismissed.)

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The Court: Call your next witness.

Mr. Swacker: Call Mr. Miller.

And thereupon WALTER MILLER, a witness called for and on behalf of the defendant, having been first duly sworn, upon oath according to law, took the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Swacker.*

Q. Please state your name and residence, Mr. Miller.

A. Walter Miller. Tulsa.

Q. What is your occupation, Mr. Miller?

A. Petroleum refiner and consulting engineer.

Q. With reference to petroleum?

A. With reference to petroleum refining.

Q. Will you state your experience as a refiner in the refining business?

A. I entered the employ of the Tide Water Oil Company in their refinery at Bayonne in 1909 as process or yield clerk, having charge of the accounting work in connection with the determination of yields and to ascertain costs in the processes of the refinery. At the end of six months I was relieved from detail work and made a special investigator for the superintendent of the paraffine and lubricating department. At the end of another year I was made chief clerk but continuing in addition with that the duties of all special investigation and being connected with experimental and research work. I held that position for about two years and a half and was then made assistant superintendent, or assistant to the general superintendent of the factory with the direct responsibility of operating the paraffine and operating department. Sometime after that, my duties were extended to include the gasoline and kerosene department; and when I left the Tide Water Oil Company, in March, 1917, I was a member of the manufacturing committee, chairman of the investigation and research committee, chairman of the processing committee, assistant to the general superintendent in charge of all processing work in the refinery, in addition to being connected with the sales department of the business also. In March, 1917, I came to Tulsa and took the position of general superintendent of the United States Refineries of the Pierce Oil Corporation, with refineries at Sand Springs, Oklahoma, Ft. Worth, Texas, and Texas City, Texas. I was with the Pierce Oil Corporation for six months and then took a position as manager of the manufacturing department and in complete charge of all the refining operations of the Cosden and Company on September

the 1st, 1917. That position I held until November the 1st, 1919, when I opened an office myself and went into the consulting business as a refiner, consulting engineer with special emphasis on operation and management. I am still connected with the Cosden and Company in consulting capacity and also have other clients with whom I am consulting regularly as well as clients for whom I make special reports.

Q. In the course of your employment and experience, have you had occasion to study technical works on the subject of petroleum refining?

A. I have, both in connection, with chemistry as directly applied to refining and with engineering, mechanical and civil engineering, directly applied to refining and the technology of the petroleum refining generally and in addition the consulting work of refining, I have had many opportunities to visit the plants and meet other refiners and compare our operations with theirs and discuss evolution of the business and improved methods in the business from time to time.

Q. And what technical societies are you a member of?

A. I am a member of the American Mechanical Society, American Institute of Mining and Metallurgical Engineering, American Petroleum Institute, Mid-Continent Oil and Gas Association, American Electro Chemical Society. I get publications of all those societies and attend meetings whenever opportunities offer.

Q. Have you had any special studies with regards to the nomenclature of the business besides the processes?

A. I have been in charge with the duties in considerable of my employment of deciding what names ought to be applied to the different products and what the rule was to be for applying the names to new products or new divisions of old products in the different refining companies I have been employed.

Q. That would be the Tide Water, the Pierce and Cosden?

A. Yes, sir.

Q. Did you have anything to do with any publication by the Tide Water Company?

A. I assisted Mr. D. W. Strafford in compiling the refining and test material in the booklet which they put out advertising the lubricating oil, Veedol, in which they went quite fully and extensively in a popular way into a brief description of the refining and tests of the various products or refining as well as giving illustrations of the methods of processes.

Q. Have you in the course of the experience you have related had occasion to deal with the commodity known as casinghead gasoline? A. I have.

Q. Where and when have you handled that?

A. Strictly casinghead gasoline, I first handled in a large

way in the refineries of the Pierce Oil Corporation at Sand Springs from March to August inclusive, 1917.

Q. And where further?

A. In my capacity as manager of the refining department for Cosden and Company, I have handled millions of gallons of casinghead products which were shipped to the Cosden Refinery from compression plants in the producing fields. In addition to that my experience has included over a longer term the light gasoline, compression plant gasoline, made at the refinery from still gas. At the Tide Water plant several years before I left, we built and operated a large compression gasoline plant which compressed recovery from refinery gases and extracted therefrom the gasoline which was available and which is to a certain extent analogous with the casinghead gas. The same thing is true of my experience at the Cosden Refinery. During my term with the Cosden Refinery we built a large plant of these compression pipes for handling the still gas which will handle from two hundred to four hundred barrels of gasoline per day.

Q. Now, is that plant practically the same as casinghead plants in the field?

A. The same thing as the casinghead plant in the field for similar purposes, with a few modifications to the certain character of the gasoline.

Q. Is the product of that plant finished gasoline or not?

A. It is not.

Mr. Payne: We object to that line of testimony.

The Court: On what ground?

Mr. Payne: The defense is trying to show the facts are different from those testified in evidence, by an expert witness.

The Court: In what respect?

Mr. Payne: You have various still gases called gasoline and are identical in every respect.

Mr. Swacker: He says they are substantially identical.

The Court: You can ask him the hypothetical question.

Mr. Swacker: I didn't ask him the question. He stated the fact.

Q. What did you say with reference to the analogy of the still gas gasoline and casinghead gasoline?

A. I should say that the properties of the individual hydro carbons such as mentioned by Colonel Burrell protein.

*mythane*, ethane, and so forth, were somewhat different, and they—technically speaking, the products were a little more sediment than the gases obtained from casinghead gas, but substantially and essentially, they are similar, in that there is not enough difference in the range of boiling point to make a difference in the handling.

Q. They both come from the same source, petroleum oil?

A. That is my opinion.

Q. They are both destined to the same use? A. Yes, sir.

Q. What is that use?

A. To be blended and worked off with refinery gasoline for use in motors generally.

Q. This still gas gasoline—is still gas gasoline a finished product?

A. It is not. It must be blended or weathered or redistilled in some manner and in the same manner that casinghead gas is handled.

Q. Are you familiar with the material testified to here as having been shipped from Keifer, Drumright and Jenks to Port Arthur? A. I am.

Q. State whether or not that material is gasoline.

A. I don't so consider it. It is not suitable for gasoline.

Q. How do you define gasoline?

A. Gasoline I define as being generally that fraction of crude petroleum or similar products lying within the range of boiling point and other necessary physical tests which will satisfactorily and economically operate an internal combustion motor.

Q. Well, will this material do this?

A. This material will not do that.

Q. State whether or not it is necessary to apply any process to this material in order to make it usable in an internal combustion engine, as you have described? A. It is.

Q. Where is that generally done in the business?

A. At the refinery.

Q. And how is it generally done?

A. By mixtures, blending it with a product of the crude oil in such a manner and such proportions as to bring the material to the point where it will operate an internal combustion motor satisfactorily and economically.

Q. That is within such range of boiling point and other physical characteristics as will do that? A. Yes, sir.

Q. Is that the only method of bringing it to the point of a finished product?

A. That is the most economical method. It can be brought to a point, can be brought to a stage of operation of the internal combustion, by excessive weathering, or distill it, and also

at times such gasoline is off color, when it is handled by acids to restore the color, or by distillation or filtration through Fuller's earth.

Q. In case it is so treated, as you have last described, is it, or not, necessary even then to blend it thereafter?

A. In the case of treating it with sulphuric acid or filtration through Fuller's earth, it is necessary to resort to the blending process the same, as otherwise in the case of distillation, possibly 25 or 40 per cent residue may be obtained which can be used without blending, although in a good distillation process there will be the first material lost, encountered, not incondensable gas and a comparatively small recovery less obtained as a distillate which will be of sufficient character that it will also have to be blended before it can be used in an internal combustion motor.

Q. Now, you said that by excessive weathering the material was brought to a condition where it would be usable. To what extent would it be necessary so to weather it, to make it reasonably usable material?

A. I believe it would be necessary to weather it where the point of residue or remainder would be from 25 to 40 per cent of the original product, the balance having been lost as a gas.

Q. Now, what is the approved practice in refineries generally, as to the percentage of casinghead that may be blended off in a mixture with other materials?

A. That varies to some extent. At the Pierce Oil plant, we followed the practice of keeping the percentage of casinghead down to three to five per cent of the total mixture. In my experience in the Cosden refinery—

Mr. Payne: Your honor, I object to this, unless the question is limited to the refineries with which he has been connected.

Mr. Swacker: That is what he is stating. He has just finished with the Pierce Company and is now starting with the Cosden.

The Court: Very well.

A. At the Cosden Refinery we received the product in blended form and so worked it off with the straight run gasoline that the proportion of raw gasoline, equivalent gasoline, was not over three to five per cent. This was done both to meet specifications of recovery, to insure greater safety in shipment of the product, to insure that the gasoline so turned out had a proper range of boiling point and intermediate curves, curve points as they are commonly known, and also to avoid excessive outage losses in our shipments.



Q. By outage losses, you mean waste by evaporation in transit? A. Yes, sir.

Q. And in the course of handling from one conveyance or container to another? A. Yes, sir.

Q. Now, have you had an opportunity and occasion to observe the practice in that respect with other refineries, or from the literature are you able to say that is regarded as the generally approved manner of handling it?

A. I am able to say, from observation, and comparing notes with others, that the practice may vary, but few, if any, go above ten per cent of mixture.

Q. You said casinghead gas content; what did you mean by that?

A. I mean by that the quantity of actual low casinghead products which enter into the final mixture which is shipped to the customer; that is to say, only three to five per cent casinghead out of each one hundred gallons—only three to five gallons in the material that comes from the casinghead source.

Q. Excluding such blending material as may have accompanied the casinghead gas itself, is that correct?

A. Yes, sir.

Q. Will you define the word naphtha as used in the refining business?

A. The word naphtha is used in the refining business generally as the generic term on that fraction obtained by the distillation of the crude oil before the product kerosene is reached. It is also used more specifically to cover the heavier blending materials which are used in connection with the compression plants in some parts of the country.

Q. Is the name extended by the individual manufacturer even further than that? A. It is.

Q. What was the practice, for example, by the Tidewater Oil Company?

A. The Tidewater Oil Company even was calling it naphtha from the beginning of the process to the finish and the shipping of the finished product. We said crude naphtha, prime city naphtha, gas naphtha, these same terms with various qualifications indicating some part of the process, in addition to which the finished product was sold perhaps at a sixty gravity naphtha, 63 gravity naphtha and 72 gravity naphtha, and so on.

Q. The material ordinarily sold and called gasoline, by them is still sold and called naphtha?

A. It was so called by them when I left their employment, and, to the best of my knowledge and belief, it is now.

Q. That is a very old refining concern, is it not?

A. Yes, sir.

Q. Do you know whether or not that is the use extending back very many years with them?

A. It is used with them extending back I think through the entire history of that plant. I will say yes, it was their practice there all the time that I was connected with the plant.

Q. Say whether or not this blending process that you have described is a process of refining?

A. I consider it so.

Q. Will you say whether or not this material shipped from Jenks, Kiefer, and Drumright to Port Arthur is properly designated by the name unrefined naphtha?

A. I consider it a proper designation, the name of unrefined naphtha, I might personally want to call it something else, to be a little more descriptive.

Q. What would you call it?

A. As unfinished naphtha or unfinished gasoline blend or unfinished casinghead blend or unrefined casinghead blend.

Q. Will the term unrefined naphtha embrace anything more than this properly?

A. Yes, sir, unrefined naphtha will embrace any naphtha product which has not been completely refined, ready for use.

Q. Will it then embrace the material referred to as tops?

A. It will.

Q. And will it also embrace the material I referred to as light end distillate?

A. It will, as all of that light end distillate comes within the boiling point range from naphtha, as I understand.

Q. Will it in such cases be a more appropriate technical correct designation of those materials than the name top and light end distillate?

A. I think so.

Mr. Swacker: You may cross examine.

Mr. Swacker: Just one more question.

Q. State, will you please, Mr. Miller, whether it would be possible in this day and age for a refinery engaged in the production of gasoline to operate successfully without resorting to blending as a part of its process?

A. Not a refinery which attempted to make gasoline to meet specifications.

Q. State whether or not there is great confusion and mis-use of names within refineries of products?

A. There is. Each superintendent of refineries and a good many refinery employees have different ideas about the nomenclature which should be applied to them depending on where they got their early experience and education in the business.

Q. Is it or not an incident of such confusion that the use

of the names of finished products are applied to the materials ultimately to become such products?

A. Such is the case, although usually when that is used it is qualified with an adjective which is perhaps more descriptive than the name alone would be.

Mr. Swacker: That is all.

*Cross Examination of Mr. Miller by Mr. Gann.*

Q. Mr. Miller, I understood you to say you are now doing a consulting work? A. Yes, sir.

Q. Have you any interest pecuniary or otherwise, any investment in the Gulf Refining Company? A. I have not.

Q. In the Gulf Pipe Line Company?

A. I have not. I have not done any work for the Gulf Pipe Line Company, or the Gulf Refining Company, or any subsidiary.

Q. Have you any connection with the Mellon Institute at Pittsburgh? A. I have not.

Q. What is the Mellon Institute?

A. I know it is a scientific school in Pittsburgh. I have not visited it or have not been in it and I know a number of the graduates and the faculty.

Q. You state you are a member of the Mid-Continent Oil and Gas association? A. Yes, sir.

Q. Is that a local association?

A. It takes in Oklahoma and Texas and Kansas districts very largely.

Q. Has that association a casinghead gasoline committee?

A. Of that I am not sure.

Q. You are not a member of such committee?

A. No, sir, not a member of such committee.

Q. I notice in your testimony you constantly used the term processing, as being the same as refining, do you do that of your own initiative or make a distinction?

A. No, no, that is my term for the different operations going on under the refining of the oil and crude and the other processes.

Q. Are not three processes usually known in the refining of the crude, the crude still, steam still, and the agitator?

A. Those three, those three distilling processes for the operation which are usually known under the generic term—together with many other operations.

Q. And when refining, general refining, referring to the article being refined, don't you limit it to the three terms?

A. No, sir.

Q. You don't think so? A. No, sir.

Q. The subject of blending I believe you said it was in mixing? A. Blending?

Q. Yes, sir? A. Yes, sir, the words have a similar meaning, compound would be another word.

Q. I understand compound means something else as applied to the oil industry, so we will not go into the compounding. Is it not a fact, several years in the Oklahoma fields the mixing and blending was done right in the casinghead plant and the product sold commercially as gasoline?

A. Of that I can't testify as an expert, because I was not in the fields here in those years.

Q. Well, you have shown knowledge of conditions in the field, isn't that a fact of which you would naturally have knowledge?

A. It is a fact I gained knowledge during this trial.

Q. You didn't have it before?

A. I have talked with men before who have tried to blend in the field and have found it unsatisfactory to blend at their plant and attempt to sell that as a finished product.

Q. And it was done?

A. It was attempted, but it was not satisfactorily done, to my understanding and belief.

Q. The point I make is the casinghead products were blended in the Oklahoma field, and were marketed commercially?

A. I can't definitely testify as to that.

Q. Now, this mixing or blending, as it is done in the casinghead field, isn't that the same kind of blending and mixing that is done at the refinery?

A. It is a much simpler operation than is done in the refinery.

Q. Simpler in its operation or its results or its effect?

A. Simpler in its results, because blending is done in the coils and becomes more complicated than in the casinghead plant, but in blending in casinghead plants, the object kept in mind there is merely to reduce the vapor tension to a shippable degree. In blending in a refinery, the object is to reduce not only the vapor tension, but reduces other undesirable characteristics to such an extent as to make a product for use in automobile motors.

Q. In your definition of gasoline, Mr. Miller, you state that a substance which would be satisfactory and economical to use in an internal combustion engine?

A. That was taking gasoline in its popular sense.

Q. Isn't it a fact that these engines will burn fuel oil?

A. Yes, sir.

Q. Isn't that an internal combustion engine?

A. It is—I didn't have that in mind.

Q. That isn't a——

A. I had in mind automobile motors rather than heavy duty engines.

Q. Will you limit your definition to an automobile motor?

A. Not necessarily, but to motors of that general type.

Q. Isn't the product that will operate a gas engine gasoline? A. So called, also called naphtha.

Q. In refineries generally——?

A. I would like to state, in connection with that I used gasoline in its more or less limited sense of today.

Q. That is not the only sense——?

A. I can testify gasoline being used in gas engines and such types of motors, where it is definitely listed as such.

Q. Would you say gasoline that does not meet certain specifications for gasoline, is not gasoline because of that fact?

A. In the first place, if we say gasoline that does not meet certain specifications is not gasoline, it——

Q. Yes?

A. You mean the product that does not meet certain specifications is not gasoline?

Q. Well, can you state it that way.

A. I would state it that that is so, yes, sir.

Q. Take, for example, a quart of gasoline which is produced by a still run process? A. Yes, sir.

Q. Its color, normal, when it is properly prepared, its gravity and all of the other characteristics meeting with the specifications in the refinery but do not meet the specifications of the sale, is it gasoline when it is produced from the refinery or is it only gasoline when it comes up to these particular specifications?

A. It is my practice in the refinery to call such products naphtha, although finished—although unrefined or unfinished until they meet gasoline specifications, until so blended and so put through the process to meet the specifications involved in the sale of the gasoline in question.

Q. Suppose they did not exactly meet all of the specifications, wouldn't they inherently be gasoline just the same?

A. They would inherently be substantially the same product, but I would not call it gasoline in the ordinary practice, in my experience with the Pierce oil plant, we called everything naphtha with the various qualities until it reached the stage when we applied, when it reached the finished stage and ready for shipment. The company's trade name for output number 2, was pennant gasoline, I don't claim the mere calling of it naphtha would—at one time and gasoline at another time inherently change the characteristic of the product.

Q. That is, if it is gasoline from its major qualities, it would still be gasoline whether it met certain particular gasoline specifications or not? A. It might be for some purposes.

Q. We will not limit it to any purposes. The tariff does not limit say satisfactory gasoline.

A. Yes, sir, it would be naphtha in the unrefined state.

Q. It would also be unrefined naphtha, would you say that? A. As unrefined, yes, sir.

Q. In your experience, the Tidewater and the Pierce Corporation and the Cosden Company, did any of these three companies call the commodity you have designated as an unrefined naphtha or by that name? A. Not specifically, no, sir.

Q. Did you hear anybody other than the defendants in these cases call it unrefined naphtha?

A. I have heard it so referred to, yes, sir.

Q. In general refinery parlance?

A. No, I wouldn't say general refinery parlance. In general refinery parlance it might be more usually referred to as compression blend or casinghead naphtha blend.

The Court: Which would be more appropriate for it, gasoline or unrefined naphtha?

A. In a generic sense, unrefined naphtha would be more proper than unrefined gasoline, but neither of the two terms in my opinion are quite descriptive enough for general refinery usage.

Q. You spoke of the still gases being compressed and called gasoline?

A. Yes, sir. That depends on the refineries.

Q. And you call the straight run product of stills, straight cut gasoline by the name gasoline, don't you?

A. Yes, those may be used in a confused way.

Q. Then if you blend the straight run gasoline with straight cut or still run gas and do you call that unrefined naphtha?

A. What do you mean by straight run as compared with still run gasoline?

Q. The still gases?

A. The gas from compression plant in a refinery?

Q. Yes, and you mix that with straight run?

A. From stills, yes.

Q. I understood you to say that you call that unrefined naphtha?

A. The first time I was speaking in the word gasoline, I was speaking of the finished product, but the first cut is called naphtha or benzine or some other term to designate it before it is gone through to the finished stage.



Q. Then your blend is to treat or blend it with more gasoline and call it gasoline?

A. That is not the same process that is usually applied? The usual process is to blend it with such other refined naphtha or products or unfinished gasoline or unrefined naphtha or unfinished naphtha as to develop into a satisfactory blend the customers of the finished gasoline you have to ship to.

Q. I understand you to say the term unrefined naphtha is not in general use?

A. The term unrefined naphtha as applied to what?

Q. Casinghead gasoline? A. Not to my knowledge.

Q. That is all.

*Redirect Examination of Mr. Miller by Mr. Swacker.*

Q. When you gave the definition, gasoline, that it was a product that could be satisfactorily utilized to run a motor, an internal combustion engine, by that you did not mean, and comprehend as gasoline all materials that could be used in an engine, is that correct?

A. That is correct, I specified further to a certain range of boiling point, and have since limited that to the general combustion motor.

Q. But you did not comprehend to use all motors and limit the word gasoline?

A. Yes, sir, it is well known that there are different types of engines which use gas oil and fuel oil and crude oil.

Q. Why is it not a practical thing to do to blend the casinghead at the plant to a finished marketable condition?

A. It would require not only the heavy product known as heavy naphtha to make a certain blend but also a large portion of straight run products from crude to give you a satisfactory distillation test and performance in a motor. The satisfactory blend is not, is, in my opinion, one, as I have stated before, where the equivalent, the raw casinghead gasoline is held down to not over five per cent and that would mean that such a plant would have to have 90 to 95 per cent of other refinery products. That would be obviously impracticable and uneconomical for a casinghead producer to have shipped, to its plant, for a casinghead firm to have shipped to its plant ninety per cent as much stuff for blending purposes as it would ship out as finished product, yet it would be necessary to do that to make it entirely, an entirely satisfactory product from it.

Q. Either that or locate the refinery at the casinghead plant and as the wells are exhausted, move the refinery around from time to time? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. And also will you state as to the degree of knowledge



and skill incident to the process of blending as compared with knowledge and skill utilized in casinghead production?

A. There is a great deal of difference between the two; the casinghead production practically is essential, requires into it a mixture or blending of sufficiently heavy boiling point products to cut your vapor tension to shipable limit; if you don't get it on this blend, you follow the process of blending it by weathering it until you reach the desired degree; in refining practice blending it includes the problem of blending for different percentages off on your distillation tests, blend for the end point, blend for the initial, blend for gravity, and in general blend to meet the various specifications, not one point, but anywhere from five to 14 points, including various distillation points in your curve and requires considerable experience and an intimate knowledge of the product that you are blending and the product you are trying to make, and usually the proportions are decided either by skilled chemists or men with long experience in the refining business.

Q. Now, you were asked the question, on your judgment, straight run refinery gasoline, meeting no specifications in particular, would be gasoline; what is the fact as to whether there ever is any such thing as straight run gasoline that won't meet some specifications of gasoline?

A. Well, a specification can be manufactured, and have been manufactured, which would include the ordinary straight run product of refineries.

Q. I am not speaking of all specifications, but I say any specification. To put the question differently: Is it not a fact that all straight run gasoline will meet some specifications, though it may not meet all specifications of gasoline?

A. If you are speaking of the physical specifications, it is possible to have a specification which straight run gasoline would not meet in any particular.

Q. Is it not a fact that all straight run gasoline, refinery run gasoline, will meet some specifications, may be not all specifications or some particular specifications, but there are specifications of such character that will accomodate any ordinary straight run gasoline?

A. I should say that would be true in a practical way, yes, sir.

Q. So there wouldn't be any such thing as straight run gasoline, and yet not be gasoline?

A. No, they belong to the same family.

Mr. Swacker: That is all.

Mr. Gann: That is all.

(Witness dismissed.)

And thereupon, DR. R. F. BACON, was produced, sworn and examined as a witness for and on behalf of the defendant, and testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Doctor, will you please state your name and residence?

A. Dr. R. F. Bacon; Pittsburgh, Pennsylvania.

Q. Have you any familiarity with the petroleum industry?

A. Yes, sir.

Q. What is your occupation? A. I am a chemist.

Q. Will you state your training and experience as such chemist and as to your present employment?

A. I was graduated in 1889 from *DePaue* University, I took the Masters Degree in chemistry in 1900. I took the Doctor's degree from the University of Chicago in 1904. I have also received two honorary doctor degrees from different universities in addition to that. I was in the government service, first in the Philippines and later in Washington, for some six years, until 1911. In 1911 I went to the University of Pittsburgh to what was known as the Industrial Research Department of that University to study petroleum. That is, doing work on certain industrial problems in petroleum. In 1912, I was made Associate Director of the Department of Industrial Research of the University of Pittsburgh; and in 1914 I was made Director, and about the same time the name was changed to the *Melton* Institute of Pittsburgh. I have been Director since that time. I have spent a great deal of my time in the last nine years in studying various phases of the petroleum industry.

Q. Did you practice your profession as well as your research work in the—in a consulting capacity?

A. I do some consulting work; very little. I devote most of my time to problems of various companies, problems of industry, technical aspects of the industry.

Q. Is that the Institute work?

A. That is the Institute work.

Q. State whether or not you have written on this subject and to what extent, and what?

A. I have written a number of technical papers on the subject of petroleum which have been published in technical journals, and Mr. Hamor and I also wrote a book on the subject of the American Petroleum Industry.

Q. You were a co-author with Mr. Hamor in the book described the other day, I believe, by Mr. Tabor, what is the title?

A. The title of the publication is the American Petroleum Industry.

Q. How many volumes is that work? A. Two volumes.

Q. It is a very comprehensive work on the subject?

A. I think so.

Q. Forget your modesty; does it cover the field?

A. It attempts to cover the field.

Q. Do you have anything to do with the gas service, did you, in the United States army during the world war?

A. Yes, sir. I was commissioned as a Colonel in the army and was on General Pershing's staff in France and had charge of the chemical work of our Army in France about one year up to the armistice.

Q. Of what technical societies are you a member?

A. I am a member of the American Chemical Society, American Electrical Chemical Society, American Institute of Chemical Engineers, Mechanical Society of London, Society of Industrial Chemistry of Great Britain, Chemical Society of Great Britain, Society of Applied Chemistry of France, American Consulting Society, American Society of Consulting Engineers, and quite a number of other societies.

Q. Any special recognition given your work in France with reference to the chemical work, and if so, what?

A. Yes, I received a citation from General Pershing for the work done in France.

Q. I intended to ask you this question before going to your qualifications, generally, before going into that; you heard the court ask Mr. Miller what the material now sold as gasoline was called before the large advent of gasoline, the product that is used today. Will you answer that question?

A. The answer to that question, the material now sold as gasoline was not manufactured prior to the advent of the automobile, and formerly the crude oil was all run into other products, and the material which we now call gasoline, which is commonly called gasoline, both properly in a common and technical sense, was not manufactured and sold prior to the date of the advent of the automobile.

Q. I don't know whether I finished your writing. You mentioned the work of Bacon & Hamor. What are your other writings? What other writings have you produced?

A. Produced a large number of papers in scientific journals and also have quite a number of patents in the field of the chemical industry.

Q. Quite a number of patents? A. Yes, sir.

Q. Are you now in the course of a work on the subject?

A. We are continually working on it, yes, sir.

[Q.] In connection with your chemical warfare work did you write anything at that time, did you prepare reports to congress on your work in France?

A. I did prepare reports to congress of that work.

Q. It is already prepared and submitted? A. Yes, sir.

Q. I suppose it is superfluous, do you read and keep advised of all the literature on this subject?

A. I try to keep up with the literature on this subject.

Q. And have a comprehensive familiarity with all literature on the subject? A. I try to have, yes, sir.

Q. Does your study embrace the product in all of its aspects or is it limited to the chemical aspect of refining or what?

A. I have tried to keep up with all the aspects of the petroleum industry, particularly as we expect, trying very hard to do that in the last three or four years, as we expect to revise this book which we got out four or five years ago, get out an edition, an up to date edition, and we are trying to keep up to date in all phases of the subject.

Q. Have you had occasion to make tests of various kinds of petroleum products?

A. I have made a very large number of tests.

Q. What kind of tests have you made, both physical and chemical? A. Yes, sir.

Q. Has your study embraced the matter known as casing-head gasoline? A. Yes, sir.

Q. Do you recognize the materials shipped from Jenks to Port Arthur and Drumright, shipped from Jenks, Drumright and Keifer to Port Arthur, heretofore testified about, are you familiar with it? A. I think so.

Q. Is that material properly called gasoline?

A. It is not in my opinion.

Q. Will you state what the proper definition in a technical sense of the word gasoline is?

A. My definition for gasoline would be this, gasoline is a mixture of combustible liquids, a finished product that will *satisfactorily* run a motor car.

Q. Now, by that are you limiting or I mean intending or attempting to comprehend all material that will do that under the name gasoline, or merely placing limitations on the name gasoline?

A. I can perhaps answer the question a little better by showing what the situation is.

Q. Do that, please.

A. The demand for oil has been almost entirely in the direction of gasoline, so that owing to the tremendous number of automobiles that have appeared in use all refineries and all oil people have had to direct their attention to gasoline; in other words, the automobile industry has dominated the petroleum industry so that of the product which is made of lighter hydro carbons from petroleum today, and I think the same

thing would apply probably for the last three or four years, 90 to 95 per cent is used only for one purpose, that is, for the purpose of running automobile engines. Consequently, I am inclined to believe if anything would come along tomorrow that would properly run an automobile engine and it was derived in large part from petroleum, that that material would properly be called gasoline.

Q. What have you in mind, some new development like this cracking process?

A. I have in mind this, that the situation is so desperate at the present time in regard to supplying the demands of automobile users, that every refining company is reaching out for material which can possibly go into gasoline and make a product that will satisfactorily run an automobile, and I haven't any doubt that in the next three or four years, possibly sooner, new material will come in, and if those materials go in with petroleum distillates, I believe that that product is correctly called gasoline.

Q. That is ordinarily used in the products sold as gasoline fractions below the naphtha fractions, that is true, to some extent, material from fractions below naphtha fractions?

A. I don't know what you mean by naphtha fractions.

Q. Of petroleum?

A. Naphtha fractions include all fractions from the very beginning up to illuminating oil.

Q. I mean of the average material that the naphtha fractions—

A. You speak in the sense of Baume scale of gravity?

Q. Yes, that is the way I use the expression. My question is, is it not the fact that materials being used and sold as gasoline, contain portions of the crude heavier than the naphtha fractions?

A. Heavier than the naphtha fractions were a few years ago, and our definition now extending up to the burning oil is properly denominated naphtha.

Q. The scale of what is naphtha fractions is gradually widening?

A. Yes, sir, the same thing is true in the early days. In the early days, when they wanted kerosene, kerosene or lamp oil, the naphtha fractions were exceedingly narrow, and they run as much as they could, and nowadays they make it as wide as they can. The thing is constantly changing.

Q. As to the word gasoline, is that the sense in which it is properly used as a name in the article of commerce, what is it?

A. I feel so, I thought a great deal since this case came up, what a proper definition of gasoline was, and it is very

difficult to make one. But I believe this is not only technically correct, but also correct in a popular sense. I feel if I backed my car up to a curb and ask for gasoline and got something that would not run my car, that would give me the belief that I was not getting gasoline; and if I backed my car up to the curb and got something satisfactory to run the car, that that stuff is gasoline.

Q. Is the definition limited to the finished commercial article?

A. I don't believe the terms gasoline, kerosene, lubricating oils, which includes the three principal products of petroleum, have ever been correctly applied, except to the finished product.

Q. Though frequently loosely applied to the material of which the finished product of that name is to be produced, is that correct?

A. That is correct, because it has been a tendency by the refiners and the people in the business, to apply a name to a thing of the product to which it is to be applied.

Q. And what do they do when they want to be particular in distinguishing it from a finished product in such cases?

A. And then they try to apply a correct name, but I must say the correct names vary in different sections of the country, and there is considerable confusion in the name, but I don't believe the term gasoline is ever correctly applied except to the finished product. As a refiner, they speak of the product which first comes over from the crude oil as gasoline; what they mean is gasoline distillate or distillate intending to become a part of gasoline at some time in the future; that is, they are thinking of the use.

The Court: How much longer before you will be through?

Mr. Swacker: I will be through in about fifteen or twenty minutes.

The Court: All right, we will take a recess now. Gentlemen of the jury, you may go under your instructions heretofore given you, the admonition of the court heretofore given you, and you will be back here at 1:45. (Whereupon the jury retired from the court room.)

The Court. Now, the matter that was brought up this morning. I will state it should not be heard in the presence of the jury. I said I would hear the government.

Mr. Gann: During the session yesterday, it was suggested that a test be made jointly by the representatives of the government and the defense. The plan was made



to take a test last night or today on the actual running of an automobile with the substance shipped from Jenks, Kiefer and Drumright. Yesterday afternoon I asked Mr. Swacker how many of us would be permitted to join in the test. He said any or all of us. Along about six o'clock Mr. Sanderson, representing the Gypsy Oil Company, appeared and said he was ready to take two or three of us down to Jenks. When it came to the question of transportation he only had a roadster that could seat three passengers, and he was going, the superintendent of the Drumright plant was going, and one of the government's men. I suggested that several of the government people would like to participate in the test, and this was at six o'clock. He said, "Very well, I will go up town and get a car and I will be back in ten minutes." We said we would wait downstairs, right in front of the door, for him. We waited 45 minutes and he didn't appear. Then we went up to the Tulsa Hotel Taxicab stand and hired two automobiles and seven or eight of us proceeded to the Gypsy plant at Jenks. We were met there by Mr. Haden and Mr. Miser, assistant superintendent and engineer, respectively, who greeted us cordially, started to show us through the plant. While we were in the act of going through the plant, Mr. Sweet, superintendent, appeared, and within ten minutes afterwards, returned to where we were and told us he had received instructions from the office in Tulsa not to permit any of us to go through the Gypsy plant, furthermore, we were not to remain on the premises, but were to take ourselves and our cars outside the gates; this we proceeded to do. Mr. Sweet said that Mr. Sanderson had told him that he was then en route to Jenks, and would be there in a few minutes. We waited patiently in the cars outside the gate for more than an hour, and Mr. Sanderson did not appear, nor did any representative of the Gypsy Company. At the expiration of this time, in company with one of the gentlemen, Mr. Payne and myself and two others, we went to Mr. Sweet and asked to be permitted to buy fifty gallons of the commodity that was usually shipped to Port Arthur. Mr. Sweet stated he had none at hand, and it would take some time to manufacture it, and furthermore, he would not sell it to us, nor would he be permitted to give it to us. We left him, and proceeded to another gasoline plant, and asked to be permitted to purchase some casinghead gasoline as nearly like this product as we could. The gravity was found to be only 72 degrees, so we did not purchase it. We went to a second plant, and purchased a quantity of 86 degree gasoline direct from the



tank. We drained the automobile in which we were, of its gasoline. It was a Packard car. We put ten gallons of this naphtha or casinghead in the car and we drove back to Tulsa with it in the car as the motor fuel.

Mr. Payne: The vapor tension of this was  $17\frac{1}{2}$  pounds.

Mr. Swacker: Mr. Sanderson got the impression, I don't know whether from me, or from the government, that there were one or two government folks going, and he came down here and there were seven or eight wanted to go, and he told them he would go back and get a couple more cars. He said it would take perhaps ten minutes to do it. He went back to the hotel and started looking around for some of the defendant's experts to go along, also, and he was delayed more or less, he thinks half an hour, but it is immaterial, but when he got back here, the government folks had already preceded him and gone out to Jenks. He called up Jenks, and I also called up and told him that neither side was to take a sample by order of the court, but it was to be handled jointly, and I suggested to Mr. Gann that a representative of either side stay with the material until such time it was blended down or weathered down to ten pounds vapor tension, and then take care of it until the test could be made in the presence of both sides. Mr. Sanderson, learning that the government folks had departed without leaving any word for him, and gone on out there, telephoned his superintendent, instructing him not to allow them to do anything or have any material or samples until he should arrive. He had spent in the meantime some little while hunting around for them after they had left. Then he started out there and his driver insisted that the short road was in such condition he had better go the other road, and it took him about an hour and twenty minutes. In the meantime, the superintendent called me up and notified me these gentlemen were there, and we suggested that they wait, that Mr. Sanderson was coming. They did wait something like an hour or more, and then they departed without any of our folks knowing anything about where they went. When Mr. Sanderson arrived, he called me up and told me they had left, and asked me to try and locate the government folks and get some out there. This material can't be taken from the pipes, it takes time to weather it.

Mr. Payne: We were willing to use it unweathered.

Mr. Swacker: We were endeavoring to get the material—

The Court: I am assuming that both sides acted in good faith, but now I am going to withdraw this other test from the jury.

Mr. Swacker: Which one?

The Court: I will permit you to go out there and to go to all these plants and take tests. I am going to give you the opportunity of a fair test, and I will permit you to go there, and the government has the same right.

Mr. Swacker: Yes, sir.

The Court: I will give you a test, a fair test. You can agree on that, and I will let you make a test of all three of them, if you want to, and make them under agreement, under the supervision of the court. I think the best thing is for you to get your conveyances and let them get theirs. The government of the United States is rich enough to pay the expense out there. It is not rich enough, but it has money enough.

Mr. Swacker: If it is a question of expense, we will bear the expense.

The Court: No.

Mr. Payne: We don't wish that that be done.

The Court: Now, you can agree. I will not withdraw the evidence from the jury now. I will wait until after the experiment is had, and the new tests are made. I will not do it at the present time.

Mr. Swacker: We think they have made a mistake in their test.

The Court: We will just let it rest like it is now.

Mr. Swacker: We think it would be advisable if the court would have the clerk, or somebody, if he can't attend to the experiment himself, attend the operation, so that if any question arises as to what was done under certain conditions—

Mr. Payne: May it please the court, we don't like to make any accusations, but so many things that can happen that we wouldn't feel safe unless our gasoline expert, Mr. Dykema, who knows more about gasoline than anybody else in the country, have charge of the plant for 24 hours—

The Court: They will be permitted to see and make inspection to see what was done, so you can put them on the witness stand and challenge whether it is fair or not. I won't require them to turn their plant over to you, be-

cause they can make the charge against you. But I will require them to let it be jointly done. They can make the same charges against you if you had charge of it.

Mr. Payne: Mr. Dykema told me last night that he would want to clean the pipes, dry them up, from start to finish, and that would be the only way for a fair test.

The Court: Get the two men that are to have charge and we will take them back in my chambers there and have an understanding. I will give the defense an opportunity to have a fair test.

Mr. Payne: Under those conditions, we are perfectly willing.

Mr. Gann: The conditions have changed, your honor, since these shipments were made. The plants at Kiefer and Drumright are no longer shipping blended material, and I understand there is no naphtha there—no naphtha at either place, no naphtha with which to blend.

Mr. Swacker: There is a little there.

The Court: The jury can determine whether it is a fair test. I want both sides—my office is to see that the case is fairly tried. I want the government to join in an effort to have a fair test made out of it, so you can have a conference in the meantime and see when this can be done, and it will not delay the trial of this case a bit.

Mr. Payne: May it please the court, I would like to make this suggestion, that in view of the fact that products produced in various casinghead plants around there is practically the same, but the distillation tests are similar, and the gravities are similar, we would like to go to one of these casinghead plants, in the presence of anybody on either side, as a surprise test, any one that we might designate.

Mr. Swacker: That would be all right, only if we concede that that particular plant and the particular wells are of the same character. There is a marked difference in compression plants.

The Court: Suppose you test not only the Gypsy plant, but test them both.

Mr. Swacker: There is a marked difference in casinghead plants.

The Court: You can show the difference. Suppose you get a sample from the Jenks plant and get a sample from some other plant, and test them both?

Mr. Swacker: But an analogous character of plant.

The Court: Yes, sir.

Mr. Payne: Compression.

Mr. Swacker: Not merely compression, because there is a variety of compression plants, but an analagous plant.

The Court: All we want is to determine what the real facts are in this case. I assume that the government has their vision and that they are biased, and so the defense has theirs also. There must be an umpire somewhere. You must look at it with that view, that we get a fair test.

Mr. Payne: That is all we ask.

The Court: I assume they will be made, so in the meantime get together and have your consultations, and none of these insinuations on either side, in the meantime.

Mr. Diggs: Let the court fix the time.

The Court: I will take that up ten minutes before court is to convene, that is, twenty-five minutes before two o'clock in my chambers.

Mr. Diggs: I might suggest, nearly any arrangement as to time will necessitate absence of the parties involved during the course of the day.

The Court: Well, we can work that out, if we have to have a night session.

Mr. Diggs: We can make a test.

The Court: We will meet in my chambers twenty-five minutes before two and take this up.

Court will take a recess until 1:45.

(Whereupon court took a recess until 1:45 this afternoon.)

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#### AFTERNOON SESSION.

April 20, 1920, 1:45 P. M.

Whereupon court having met pursuant to adjournment, and the jury having been called and all found to be present, and counsel for the plaintiff and counsel for the defendant announcing to the court that they were ready to proceed with the further trial of this cause, the following further proceedings were had to-wit:

Whereupon Mr. R. F. BACON was recalled for further direct examination by the defendant.

*Further Direct Examination of R. F. Bacon by Mr. Swacker.*

Q. Did you describe Doctor, the characteristics of the gasoline from the point of view of what they are composed?

A. I did only in a very general way.

Q. What would you say in that respect?

A. What would I say?

Q. Yes?

A. I made the definition of gasoline which had to do with its use, I said in substance that it was the finished article composed of inflammable liquids, mainly from petroleum which would satisfactorily run motor cars.

Q. Are there limits to its physical properties in the shape of boiling points by which you may know particular combinations of the lighter hydro carbon compound, but which would not be gasoline, and others which would be in that definition? A. I think you have the cart before the horse.

Q. You put it the other way then?

A. Well, in this sense we speak about boiling point and about Baume gravity and about distillation curves, that is simply one way that is a way the commercial world can look at these things and state that it is satisfactory gasoline, but the thing behind all this is the actual work on the engine, that is the first, at first these things have been made, then we—which we call gasoline has been actually tried in the engines and if we find it performs satisfactorily in an engine. then we make these boiling points and Baume gravity and so forth, so the second time when we get hold of new material that corresponds to the boiling point, gravity and so forth, then we can say on the basis of our first experience this second material will also perform satisfactorily in an engine.

Q. Now, have you made any experiments in connection with materials of this character, to determine their usability?

A. I make quite a large number of experiments; in fact, in the Mellon Institute we have a gasoline engine which is connected up with an apparatus to register the power it develops, and the way that is connected up with a *dynamometer* is with an electric motor, and the gasoline engine is run and the power delivered to the electric motor to a switch board so you can tell absolutely what the gasoline engine is doing, and it is arranged so we know about the test. I have tested on that machine a very large number of gasoline materials.

Q. You try it in the machine getting the record of what its performance is, whether it is good or bad? That is the investigation? A. Yes, sir.

Q. And then the other end of it is that you analyze this material so you can recognize its characteristics wherever you hit them, as to how they worked out in performance?

A. Then we make gravities and initial points and end points and we get a curve on the gasoline that we know is a good gasoline, because we work it out in the engine; we know it runs satisfactory in the engine. Then if we get a new gasoline, we could probably tell from its boiling point and its curve, as to whether it also would be a satisfactory gasoline. Then I might state further, that all of these tests of that kind are really based on work of general character, that is, probably in the beginning there were not many institutions that had engines set up in this way, but there were gasolines on the market that everybody knew ran a motor in a satisfactory way. These gasolines were tested and people said that because these gasolines satisfactory ran a motor car, that that was the standard. But in most technical institutions now, they go further than that. The thing we do at the Mellon Institute, and I think is done in all scientific institutions, we not only test the gasoline in the engine in the institutes where we can measure the horse power, but we get several different kinds of cars and drive them over a road near Pittsburgh, that has a lot of hills, and we see how they perform.

Q. In this fashion, you get the performance of any number of curves, is that the idea?

A. The curves are simply another way of telling what this performance has been.

Q. Just a sort of index to performance, is that the idea?

A. The same as I could write out a long story, telling all about what has happened in the tests in the laboratory, but we write it in a short story by means of a curve.

Q. Do you sometimes and have you sometimes tested materials supposed to be or considered to be gasoline and find that they wouldn't operate the engine at all?

A. Yes, I have tested material of that character, in fact, I have tested the material which is commonly called casing-head gasoline.

Q. What was your experience in that respect?

A. It was casinghead gasoline which I have tested, did not make the engine run at all; once in a while you will get one that will make the engine run in a very unsatisfactory manner. The engine will run along a little but delivers very little power and the consumption of gasoline will be very high, and perhaps an engine will spit and miss fire, and things of that kind.

Q. And I presume you plotted the curve of the material which you tested that failed to perform altogether as well as those that did perform? A. We have plotted.

Q. And by this plotting, you have made curves of that character, you are able to distinguish the particular gasoline

as to its possibility of performance, perhaps not drawing an absolute line, but at least in some cases you can disregard entirely when you see those curves, as being material that would perform as gasoline?

A. Yes, sir, you can tell very easily as to whether or not the thing is a satisfactory gasoline or whether it is gasoline which will not run a car. It is a point in between that will be difficult to say. But you can tell very easily whether it will run a car in a satisfactory manner.

Q. Those are so common and so well distinguished there is no difficulty in ascertaining whether it will or will not run in a satisfactory manner? A. No, sir.

Q. But there is a shadow between those that will run and those that will not run at all, is that true?

A. That is quite true.

Q. And you have some curves that will distinguish to you material that will absolutely not run? A. I think so.

Q. And others which might or might not run?

Mr. Gann: I object to the attorney testifying.

Mr. Swacker: I don't think that is testimony. I am just clarifying the situation.

The Court: I think that is an objectionable manner of examination of the witness.

*By Mr. Swacker.*

Q. Then the sending from the character of curves which you have last described would distinguish to you a material being incapable of being performed as gasoline, what are there in the various character of curves, that distinguish to you a material that would operate a car satisfactory will these curves range? A. Please repeat the question.

Q. I will state the question over. The last curves you described were those which distinguished a material as incapable of performing as gasoline; that is, that would distinguish it with certainty. Is that correct?

A. There are such curves.

Q. State the range of curves that will exist between that and those which you know will perform satisfactorily as gasoline.

A. A substance to perform satisfactorily as gasoline must have comparatively small amount of very volatile constituents, must have a moderate amount of intermediate and may or may not have a moderate amount of end constituents. If a curve shows that a so-called gasoline has a very large amount of very large curves and a comparative small amount of intermediate curves and a moderate, or no amount of end constit-



nents, such a curve would indicate such a material would not satisfactorily run a motor car.

Q. Curves in between the two curves you spoke about, would they or would not they run a car?

A. There are all degrees.

Q. Some you can distinguish as being ones which would run properly—probably run a motor car, but poorly?

A. Yes, sir.

Q. I ask you to look at this paper and see if you can identify it?

The Court: Have it numbered first.

Q. I hand you Exhibit No. 140 and ask if you can recognize that sheet and state what it is?

A. This represents certain curves made of two so-called gasolines. The curves was made by Dr. Garner, I believe.

Q. That is by distillation tests, shown on them?

A. Yes, sir.

Q. Is that the way you get at them? A. Yes, sir.

Q. One of them is in ink and the other in red pencil?

A. Yes, sir.

Mr. Swacker: We offer that in evidence.

Mr. Gann: You say it was made by Dr. Garner, not made by you?

A. The tests were not made by me, the curves was drawn by Dr. Garner; I think I was present when one test was made, but not the other.

Mr. Gann: How long ago was this made?

A. Within the last three or four days.

Mr. Gann: What product, of the Gypsy?

A. Yes.

Mr. Swacker: I don't know, as he is competent to answer in that respect. This is simply an illustration. It is not claimed to be the product of a particular plant at this time.

Mr. Gann: What is the purpose of offering this?

Mr. Swacker: Just to show this testimony he is giving as to how a curve will be indicated by the material.

Mr. Gann: As to whether it is casinghead or straight run gasoline?

Mr. Swacker: On certain range of boiling points.

Mr. Gann: Alright, we have no objection to that.

Q. Look at this Exhibit 140, I will ask you if you can, based on your experience and observation in testing these ma-

terials, in these particular tests, by tests of this character of material generally are you able to say whether or not the curves in ink would be the material that would operate a car with gasoline, an ordinary car?

A. I would say the ink material would not.

Q. What would you say about the lead pencil material if you can?

A. That would certainly operate very poor if at all. It might operate very poorly, we are getting into the shadow then that we were talking about.

The Court: You offer this in evidence?

Mr. Swacker: Yes, sir.

The Court: There seems to be no objection, it may be admitted.

Mr. Swacker: The figures shown on this I presume are the percentage plus distillation runs, distillation running up and down the page and the temperatures across the bottom. That's what they are?

A. That is correct, yes, sir.

Q. Those temperatures are Fahrenheit?

A. Those temperatures are Fahrenheit.

Q. Have you made any distillation tests of the particular material or participated in the making or observing of the making of the distillation tests of the particular material manufactured at Kiefer?

A. I was told this particular material of the distillation I saw was manufactured at Kiefer.

Q. You are one of the gentlemen to whom Mr. Sanderson gave samples of the material from Kiefer? A. That is true.

Q. He gave you no other since then, than those testified to by you as given you, that correct? A. That is correct.

Q. Nothing happened to those samples in your hands until after these distillation tests were made? A. No, sir.

Q. You testified having made distillation tests and observing them of this particular material from Kiefer, assuming that material Mr. Sanderson gave you was such?

A. Yes, sir.

Q. Will you say whether or not that was a usable gasoline?

A. The distillation test indicated it was not.

Q. Based on the curves resulting from the distillation test, you can say it was not? A. Yes, sir.

Q. Now, then, did you participate in the car tests that were made with that material, as to which Col. Burrell and Dr. Garner and Mr. Shock testified? A. Yes, sir, I did.

Q. Was your observance of the performance the same as theirs? A. Yes, sir.

Q. That is non-performance? A. Yes, sir.

Q. Now, it was suggested by interrogatories of Dr. Schock that might it not be possible water may have gotten into the carburetor, and in that case cause the non-performance. What was the fact as to the priming of the material—priming of the carburetor with other material in connection with that test?

A. Primed it with gasoline purchased at the curb in Tulsa.

Q. Primed it first with casinghead?

A. Primed first with casinghead, yes, sir.

Q. Did it start? A. No, sir, it would not start.

Q. Then what?

A. Then the casinghead was taken out from the carburetor and the carburetor again primed with gasoline which was bought in Tulsa and which was the same gasoline that had run the car out from Tulsa to the point of test.

Q. Then what happened?

A. The car started immediately and run about 100 yards, I guess, in the case of the Packard car, and about 200 yards in the case of the Dodge car.

Q. How far would this priming material carry it?

A. About that distance, and we tried to calculate it, and decided that was about the distance.

Q. Now, then, if there had been any water in those carburetors that would have interfered with the operation of the material when primed with casinghead, it would have been impossible for it to have gone under the prime with curb gasoline, isn't that true?

Mr. Gann: I object, your honor, to the form of the question.

The Court: Yes, I think that is objectionable.

Mr. Swacker: Well, I will change the form. I don't think it makes much difference.

Q. Can you say, as the result of those experiments, whether it was possible that the non-performance of the casinghead grew out of the presence of water in the carburetors?

A. Any possible water in the carburetors or in the gasoline used had nothing to do with the non-performance. If it is proper, I would like to say it is my opinion it wouldn't make any difference if it did have water in it, because I have often, in my cars, in trying to clean out the carbon, I have poured a whole bucketful of water through the cylinders. The car will run right along.

Q. Now, then, I don't know whether you answered the question, that is, whether it was possible that the non-performance was the result of water in the carburetors?

A. I said that the non-performance, that any possible water in the carburetors or gasoline had nothing to do with the performance. As a matter of fact, I am sure there was no water, unless you use the word in the sense of there being a trace which might have been discovered in the gasoline.

Q. Based on those tests, will you say whether this material is or not gasoline?

A. I would say this material is not gasoline.

Q. Will you say whether you regard the name unrefined naphtha as an appropriate name to cover this material?

A. I regard the name unrefined naphtha as a proper designation for this material, I don't think it is the most descriptive designation a person could think of, but certainly regard it as a proper designation.

Q. Do you regard that designation as comprehending more than merely casinghead?

A. Yes, sir, the term unrefined naphtha is a very broad term.

Q. What does it comprehend?

A. Comprehends any naphtha that had not been brought to a finished state.

Q. When you say any naphtha, what do you mean by any naphtha?

A. Naphtha is a term, I suppose we are confining ourselves to the petroleum business?

Q. Oh, yes.

A. Confining ourselves to the petroleum business, naphtha is a term which is used for any low boiling product of petroleum which boils below the illuminating oil fraction.

Q. Then that would embrace the material that you would regard as gasoline as you have heretofore described, would it? A. Yes, sir.

Q. Now, have you made a study of the art of refining?

A. Yes, sir.

Q. What would you say whether blending as applied to gasoline and other lighter products is a part of the art of refining?

A. I think it is—I think there is no question but what it is a part of the refining.

Q. What is the effect of blending on the available gasoline supply of the country?

A. Has the effect of making it possible to very largely increase the available supply of the gasoline supply of the country.

Q. In the quantity of casinghead actually produced, or more or less? A. Much more.

Q. How is that—state how that is done?

A. It enables the refiner to make a wider naphtha cut than he could otherwise make because in every operation before you obtain the satisfactory gasoline, one must have a certain amount of the starting material, and a certain amount of the middle material, and a certain amount of the end material. Now, the casinghead gasoline, so-called, supplies more of this starting material than the refiner could get from other supplies which he might have on hand, consequently it enables him to use a wider cut and more of his total materials in the form of gasoline than he otherwise could.

Q. And what is the effect, on the casinghead itself, of the same operation blended?

A. It enables the casinghead manufacturer to find a market for his product; if it were not for the operation of the plant, there would be little or no market for casinghead products. I don't know what it could be used for. It wouldn't be used for anything in tonnage lots; so it would make a market for the casinghead product.

Q. Would it be practicable to use casinghead on—in its ordinary form?

A. Casinghead can be weathered down to a point where it would run a motor car, in a way not very satisfactory; but it will run a Ford, particular- a Ford; a Ford will almost run on rainwater. It will make a Ford run in a very unsatisfactory way, particularly a cold day it might get along very well; but if you tried to weather it down, the loss would be very large. I doubt if people would go into the casinghead business—I doubt if it would be profitable on that basis.

Q. Dr. Bacon, can you say is liquefied petroleum gas exactly the same thing as casinghead gasoline, or what is its relation to it?

A. The material known as liquefied petroleum gas includes a great many materials which casinghead gasoline, so-called, does not include, that is, in the term liquefied petroleum gas we include a lot of very light materials. Now, you couldn't say they are the same, any more than you can say gasoline and kerosene are the same. They have the same series of hydro carbons in them. We assume they are the same series of hydro carbons that run through crude petroleum. There are a certain set in kerosene, and a certain set in gasoline, and so forth. It is the same with liquefied petroleum gas as compared with casinghead gasoline. You have in the liquefied petroleum gas, you have the whole range. In casinghead gas, you have only part of the range, so that they are not the same material.

Mr. Swacker: I would like to state to the court, I am not familiar, very familiar with the practice in this

respect; we would like to put in a lot of literature on this subject, technical literature, we have books and copies here. I don't know what the rule is—if it is only on cross examination.

The Court: That is the only way to put it in, is on cross examination.

Mr. Swacker: One reason I think it might be competent, I think we have the right to offer it to show the use of the words in this technical business.

The Court: You can ask him and say how is the word used by this author. That is the way I understand the rule.

Mr. Swacker: Might we recall Mr. Tabor, who has compiled the data in that matter, in preference to taking it up with Dr. Bacon?

The Court: Yes.

Mr. Diggs: I have sent for some books and authorities to submit to the court—never mind, I understood the court had made a ruling—I did not understand—while I was away.

The Court: Are you ready for the plaintiff to proceed with the cross examination?

Mr. Swacker: Yes, sir.

The Court: Proceed.

*Cross Examination by Mr. Payne.*

Q. Did I understand you to say you were with the Mellon Institute at Pittsburgh? A. Yes, sir.

Q. Is not the Mellon Institute owned by the same interests that the Gulf Refining Company is?

A. The Mellon Institute is not owned by anybody; the Mellon Institute—I think I have what is in your mind, the Mellon Institute was an institution founded by Mr. Mellon as a philanthropic institution and is a part of the University of Pittsburgh and the general idea behind that was to build a scientific research institution that would demonstrate to the industry that research work properly done was a paying proposition. The Mellons don't own it at all.

Q. Who is president of the Gulf Refining Company?

A. Mr. Davidson.

Q. Now, referring to casinghead gasoline, when the gravity is high, or too high, for automobile purposes, what is usually done to bring it down?

A. To make it satisfactory?

Q. To lower the gravity?

A. We don't think of it in that purpose; we don't care what the gravity is. It is the question of making the greatest number of points correspond so as to make a satisfactory fuel. If you want the thing, to think of it from the standpoint of gravity, only what we do is add substantially of a lower gravity, but you might add a substance of low gravity and not—and then not obtain satisfactory motor fuel; that is, gravity standing alone means nothing.

Q. If your initial boiling point were considerably too low for satisfactory operation, how could you cure that so as to make it satisfactory? How is it usually cured?

A. The initial boiling point, alone, has nothing to do with it; in fact, would always be glad to have the initial boiling point low, but the initial boiling point alone means absolutely nothing in regard to gasoline.

Q. It has a great deal to do with the start of a car itself, does it not?

A. Not the initial boiling point—if you will tell me the fraction curve referred to in the first ten or twelve degrees I will be able to answer your question, but the initial boiling point means absolutely nothing.

Q. What is that taken for?

A. So we will have a start for the curves. The thing we are interested in is the fraction of the first ten degrees.

Q. What I am interested in is not the start of the curves, but the automobile? A. Yes, sir.

Q. The lower the point the quicker the car could get away, the quicker your automobile would get away?

A. Absolutely not, a small amount of ether—you could put that in your car and have a very low initial boiling point and that would be way down.

Q. In these various specifications, the initial boiling point is stated?

A. That is to give you the start of the curves and the thing the man is interested in, in which this substance will run a car is the first ten degrees.

Q. Let's forget about this curve? A. Yes, sir.

Q. Now, in specifying the distillation tests for gasoline what is the purpose of specifying the boiling point, an initial boiling point?

A. The purpose is to make a curve. Now, perhaps I can explain it.

Q. You mean a curve with the automobile? A. No, sir.

Q. I asked you to tell about the automobile and forget about the theoretical end and get down to the practical?

A. If a gasoline contains a small amount of volatile con-



stituents, then it will run a car in a satisfactory way, providing the other materials which I have specified before are present in the gasoline. If it contains a very large amount of volatile constituents, then it will not run a car.

Q. The lower the volatility, the lower the initial boiling point, is that correct?

A. No, you will have to speak—you are trying to ask a scientific question in an unscientific way.

Q. No, hold on. The lighter the material, the quicker it will boil, is that correct, at a lower temperature?

A. Perhaps I can state your question.

Q. I just want you to answer my questions.

The Court: Just answer yes or no.

(Question read by the reporter.)

A. That question don't mean anything at all.

Q. In your distillation tests, isn't it a fact that the lighter and more volatile the material is the lower the temperature at which it will boil?

A. That is correct, yes, sir.

Q. And isn't it also true that the lower the boiling point the quicker it will vaporize in the carburetor?

A. The lower the boiling point the quicker it will vaporize in the carburetor. That is also true.

Q. In other words, is it not a fact, that specifications usually designate a minimum boiling point?

A. They usually designate a maximum boiling point.

Q. What is that in the government specifications?

A. I think that is 140.

Q. That is, it can boil anywhere up to 140 so that if it boils at 50 or 40 it is within the specifications to that extent?

A. Yes, sir.

Q. And if I get your theory correctly, you take what is, or rather whatever one calls gasoline, and if it is a little bit too volatile, it is not gasoline and you add a little naphtha to it and then it becomes unrefined naphtha, is that correct?

A. Please read the question.

(Question read by the reporter.)

A. Do you mean to ask me what every one calls gasoline? You mean casinghead gasoline?

Q. What is universally known as gasoline when it is gasoline, whether it comes from gas, or casinghead gas, or other material, or natural gas gasoline, is that—it is that kind of gasoline I am talking about.

A. If I understand the question correctly—Read the question.

The Reporter: The question is with the other reporter, who is out.

A. As I understand your question—if I understand your question to be that adding casinghead gasoline to naphtha, do I know that product unrefined naphtha, I do; I call it unrefined naphtha.

Q. You have a material which you call casinghead gasoline. It is somewhat too volatile, to lower the volatility you add naphtha to it, or some other petroleum product, and you get what you admit would be gasoline; is that correct?

A. I admit that is not gasoline.

Q. But you mean the final blended product is not gasoline?

A. If it is blended in such a way as to meet the specifications or leaving the specifications out of consideration, if it is blended in such a way that it will run a motor car, I call it gasoline; if not, I don't call it gasoline.

Q. If I understand you correctly, what is universally known as casinghead gasoline, you call unrefined naphtha, is that correct?

A. That is correct. I don't mean it is universally known as casinghead gasoline.

Q. Do you show that in your book?

A. I have no doubt it is called casinghead gasoline.

Q. Didn't you just call it gasoline?

A. I think probably because I have always assumed the word casinghead gasoline is really a compound word, because I have always known that casinghead gasoline was a different type of material from what we commonly call gasoline; perhaps I can illustrate what I have in mind better by giving an illustration. For instance, we commonly speak of black lead or graphite, a material in lead pencil—

Q. Now, we are getting a little too far afield. I will bring that out later.

Mr. Swacker: I think the witness ought to be allowed to finish his answer.

Mr. Payne: He is not answering the question I asked him.

The Court: Proceed.

Q. When this product which you in your book call gasoline is somewhat too volatile to denominate as gasoline it can be properly called unrefined naphtha, is that correct?

A. Yes, sir.

Q. And you then add a little more of the same material to get it back to gasoline?

A. I did not say add a little more, but add the proper amount of the same material and other materials, and then you can bring it to gasoline.

Q. Now, as a matter of fact, is casinghead gasoline, unrefined in any respect, or is it not refined below the surface of the earth by a natural process?

A. I consider it unrefined because I consider any product that comes out of the ground unrefined. I would like to illustrate that also.

Q. You have a false assumption, because the gasoline does not come out, but the gas—

A. Yes, sir, gasoline comes out with the gas.

Q. Not in that state. A. I might say—

Q. Have you seen casinghead gasoline before it was blended, or anything done with it? A. Have I ever seen it?

Q. In a plant? A. Yes, sir.

Q. What plant?

A. I have seen it in several plants around Pittsburgh and the state of West Virginia.

Q. Now, after you—after this gas is liquefied and compressed into gasoline, is it not a fact that the liquid is a clear white color, is is not a fact that it has all the appearances of a high state of refined gasoline?

A. The product that comes out of the ground and as made by manufacture, as a general rule, is of a good color; that is, a color that approaches a water white color, but I don't consider that has anything to do with whether it is refined or not. I call the substance refined when it is up to the standard you are aiming at, and until it is up to that standard, it is not refined.

Q. So you adopt the commercial standard of barter and sale to determine the state of refinement?

A. I think that is all that anybody does. We have standards for everything, and particularly standards for the ordinary determination of whether a thing is refined or unrefined. I will be very glad to give you an illustration.

Q. I will ask you if it is not a fact a great many things may be in a high state of refinement, and yet not be such as to be marketable?

A. Yes. That is a point I wanted to illustrate, I wanted to give you, that is, exactly that point. I can give you several: Take sulphur; sulphur is under the ground in the State of Texas and Louisiana, is melted by hot water, and is pumped out of the ground with the water, and separated from the water that sulphur will run 99.7 pure, but that sulphur is shipped and sold as crude sulphur. Now, similarly, the reason it is done that way, that is the standard for crude sulphur, and in addition to

that, there is a standard for refined sulphur, and this standard don't meet the standard for the refined sulphur; the same as the gas components—

Q. Well, now is it a fact of your own knowledge, that this casinghead gasoline is usually shipped as unrefined naphtha?

A. I do not know of my own knowledge how it is shipped.

Q. That is all.

*Redirect Examination of Dr. Bacon by Mr. Swacker.*

Q. Go on with the illustration of copper refined or unrefined?

A. Copper as it is made in the plants of the mines very often will run better than 99 per cent of actual copper and it happens that the standard for refined copper is very high. The big use for copper—refined copper is conducting electricity and that requires exceedingly pure copper and this 99 per cent copper is sold as base copper or ana copper, whereas the refined copper is sold as electrolytic copper so you can't say a high degree of purity is refined or unrefined. It is refined if it meets the market standard and if it does not meet the market standard it is not refined.

Q. Can you illustrate from other commodities that the same is true of. Take sugar, glucose, what is the situation about that if you know anything about them?

A. I don't know so much about them from my own knowledge. The other things I testified to, I happen to know about that of my own knowledge from those industries.

Q. You went on to explain something about the use of compound words; you said you took casinghead gasoline and used that to be a compound word as distinguished from what?

A. The point I had in mind was this, that we call the stuff in lead pencils—we call it black lead and we shorten it down to lead. If I go into a store and I want to buy a pencil of this type, I simply ask for lead for these pencils. I know that is not lead; I know it is graphite. If I wanted to ship any graphite, I certainly wouldn't ship it as lead. We speak about casinghead gasoline and that was a compound word. I have no doubt used either portion of the word casinghead or gasoline referring to casinghead gasoline where the connection was obvious. I have assumed it was a compound word because the material was of a different character from gasoline.

Q. For example, german silver and silver, or quicksilver and silver? A. Yes, sir.

Q. And isinglass and glass? A. Yes.

Q. Now, you started to explain that gasoline comes out of the earth, will you finish that explanation; Mr. Payne cor-

rected you and referred to the gasoline coming out of the earth and you started to make some explanation, will you finish it?

A. I started to tell him about the analogy with sulphur. Water and sulphur comes up out of the earth and in the business of gasoline and gas comes out and we separate the sulphur and water in one instance and the gas and gasoline in the other.

Mr. Swacker: That is all.

*Recross Examination by Mr. Payne.*

Q. Can you name a technical word that denominates casinghead gasoline, any gravity, as unrefined naphtha?

A. I could probably name some that denominate it naphtha.

Q. That is the distinction here, refined or unrefined, unrefined naphtha, yes or no, please?

A. I can't offhand, no, sir. I might be able to find some but I can't offhand.

Mr. Payne: That is all.

Mr. Swacker: That is all.

(Witness excused)

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And thereupon, GEORGE H. TABOR, was recalled for further examination and testified as follows:

*Examination by Mr. Swacker.*

Q. Mr. Tabor, have you made an investigation of technical literature with a view to ascertaining the use of the terms naphtha contained therein? A. I have.

Q. Have you a number of references wherein that term has been used in such books? A. I have.

Q. This covers about five pages. I either offer it as an exhibit or offer to let the witness read it.

Mr. Payne: I object. It says unrefined naphtha. Otherwise it would be immaterial in this case—unless it says that.

The Court: You object to him offering it in that form?

Mr. Payne: We object to it.

The Court: I think the test is unrefined naphtha.

Mr. Swacker: I think we have a right to show the meaning of naphtha.

The Court: You have already shown that. You used the word naphtha. It will be considered. I will permit you to show by this witness this book, and this is a book in which the term unrefined naphtha is used in these so many times.

Mr. Swacker: I think we have a right to prove the term naphtha—

The Court: You can prove what naphtha is, the definition for it, and you may ask him what authorities support that definition. That is the way I understand the rule.

Mr. Swacker: I will do that, then.

Q. You gave the definition of naphtha when you were on the stand previously, did you not? A. I did.

Q. Can you say what authorities support that definition you gave?

A. Practical Treatise on Coal, Petroleum and Other Distilled Oils, Abraham Gesner, New York, 1865; by American Chemists, 1872, volume 2, pp. 401 to 405; by S. Dana Hayes. Report on Petroleum Oil Advantages and Disadvantages, by C. F. Chandler; American Chemists, 1872, volume 2, page 446 and 447; Export of Petroleum Products for 1874 and 1875, American Chemists, 1876, volume 6, page 252; as covered in petroleum and examinations by A. Bourgounon, General of American Chemical Society, 1879, volume 1, page 188, and following: Petroleum Distillations and Modes of Testing Hydro-Carbons by Allen Norton and Leete, New York, 1884; Report of Producers Technology and Use of Petroleum and Its Products by S. F. Peckham, Census Office, Department of Washington, D. C. 1885.

Mr. Payne: May it please the court, I understand an objection was sustained to this.

The Court: Well—

Mr. Swacker: The court sustained an objection to our reading the excerpt.

The Court: I asked him as to the definition of naphtha heretofore given by him and the scientific books giving the same definition. Now these books he is designating.

Mr. Payne: Is that not improper, as the witness is supposed to be stating his own opinion, and we could not challenge his opinion. It is not necessary to bring in all these authorities in the world on the subject. I think that is just unduly encumbering the record.

The Court: If his definition is to be controverted,

or it is a controverted matter in the case, a man might not be a famous expert, but the fact he is supported by a great many experts in the world, it seems to me that would be competent.

Mr. Payne: That is not controverted. We did not controvert it on cross examination, made no point.

The Court: Very well, if you do not controvert the definition of naphtha he gave in his evidence, I will exclude it on the ground it is irrelevant and immaterial.

Mr. Payne: We did not, and don't now.

Mr. Diggs: You asked for some authorities.

The Court: Well, but they say they don't controvert the definition he gave on naphtha.

Mr. Diggs: I understand the government admits that, admits it is naphtha.

Mr. Payne: No.

The Court: They don't controvert the definition he gave of what constitutes naphtha.

Mr. Swacker: The definition he gave embraces this material. That means that the government concedes that this material is naphtha.

The Court: No, that is a conclusion, as to whether it embraces this material.

Mr. Chambers: Then those authorities back there wouldn't be authorities on that definition.

The Court: The way I understand the rule, you can take up these books and say whereabouts is that rule? It is a rule and the basic principle is to get the truth?

Mr. Payne: Of the facts in issue.

The Court: Well, now you have got to prove what naphtha is to determine whether anything is unrefined naphtha.

Mr. Payne: If I remember correctly his definition of naphtha was used in the generic sense, that it was of light hydro carbons, including the fractions down to kerosene, but not including kerosene. Is that correct.

A. That is part of it.

Mr. Payne: What was that?

A. May be a different way, like the material in question in this suit, the unrefined naphtha that comes from the casing-head.

Mr. Payne: I will admit that.



Mr. Swacker: That will include that material. Similar to that you described as being a product of distillation. He says the term embraces that term in this product.

The Court: I think the way to do that is to prove it in the ordinary way. One may take these books. They are here in court.

Mr. Swacker: We will produce the books or photostat copies where the books are out of print and where no copies are to be had.

The Court: You may have these turned over to them, and if they desire to recall him or not.

Mr. Payne: That is not the question. The material which they call the unrefined product——

The Court: Now, anything has got to be naphtha would be unrefined naphtha. That is self-evident. In the process of proving, you can prove naphtha, what it is, then you can prove what naphtha unrefined is.

Mr. Payne: I have no objection to reading from those authorities, so long as it is understood that they relate to naphtha or unrefined naphtha.

Mr. Diggs: They speak for themselves.

The Court: Very well. I will rule the evidence thus far is competent.

Mr. Swacker: Let me go back and read such excerpts of these different books to which you have made reference as to determine the definition you give for naphtha.

The Court: I don't understand that to be the rule.

Mr. Swacker: That is what Judge Diggs just read.

The Court: I don't understand that to be the rule.

The Court: Not in evidence in chief.

(Whereupon Mr. Diggs starts reading from book: "Some Scientific Authorities"——)

The Reporter: I cannot hear you, Judge Diggs.

The Court: Let me have the book.

(Whereupon the book was handed to the court.)

Mr. Diggs: I want to suggest to the court and the United States attorney in his view the whole question turns on these words of what better method can we establish than the use of the words——

The Court: This is not a question of the use of the

words, it is the definition. I will not permit him to read this out of the book.

Mr. Diggs: That is another book here, your honor.

The Court: I will exclude them, I will permit you to go this far. Books or admitted authorities may be admitted in the evidence, I will permit him to state that such and such works, scientific works, support this opinion, but that is as far as I will let him go, unless it is raised on cross examination.

Mr. Diggs: If we can also ask the witness if the standing of the authorities to which he refers that support him, then we will be content to proceed on that.

The Court: No, just make your record.

Mr. Swacker: I thought, your honor, said a while ago you would allow him to state this is the scientific work and the only additional thing we want, that Mr. Diggs request is he be allowed to state his standing.

The Court: Very well, he may do that.

Q. In going back, Mr. Taber, to the first one of these books you have mentioned, being Abraham Gesner, who is Abraham Gesner?

A. He was always writing on petroleum, petroleum American products.

Q. Is he a recognized authority or writer or otherwise?

A. His work is out of print, but much sought and the things he stated about petroleum has been found to be true in many cases in which he stated was a matter of his opinion.

Q. Who is F. Dana Hayes, you mentioned?

A. F. Dana Hayes is a chemist and geologist of national standing.

Q. And his work on history and manufacturing of petroleum products, is that regarded a scientific work of value?

A. It is published in the American Chemist in 1872 and considered worthy of publication, which is a scientific publication.

Q. This C. F. Chandler that you mentioned here on the export of petroleum oil and its advantages and disadvantages?

A. C. F. Chandler was for many years was considered the greatest authority on petroleum in this country. Had a—I think the professor of chemistry of Columbia college, I think he is Emeritus professor he was head of the state board of health in New York sometime in the early 70's and he prepared a code for the petroleum oils, safety code, adopted by the State of New York, for handling, he recently received a medal

from them for his standing as a chemist at the hands of the chemical society of New York.

Q. What is this American Chemist? Is that a scientific publication? A. That is a scientific publication.

Q. Of a periodic character? A. Of a periodic character.

Q. How does it stand in the literature of this character?

A. Its articles are saved and quoted from.

Q. The next item you read was from that paper, the export of petroleum products? A. For 1874 and 1875.

Q. Now who was A. Bourgenon?

A. I am familiar with him by reading quotations from his writings in many books on petroleum.

Q. This purports to be from the Journal of American Chemical Society?

A. Yes, their article, written by him—I say his articles are quoted very much.

Mr. Payne: I object. I understood your honor had this under consideration.

The Court: No, I permitted him to state that such and such scientific books sustains the definition I have given of this term.

Mr. Payne: May it please the court, we are unable to find a Packard automobile in the city for hire. We have a Pierce Arrow available. Will that be satisfactory for a test?

The Court: Pierce Arrow is a standard car.

Mr. Swacker: As far as I know, yes, sir. It is strange they can't find a Packard—

The Court: For hire, yes, sir. The owners don't want to hire them out. They are a high priced car.

Mr. Swacker: I think we can go over to the Tulsa Hotel, across from the Tulsa Hotel, and find one.

Mr. Payne: Hold on, Mr. Swacker.

The Court: Any objection to a Pierce Arrow?

Mr. Swacker: We will try them both.

Q. This Journal of American Society, that is a technical journal?

A. A technical journal of high standing, and likewise as authoritative.

Q. Who was Allen Norton Leath? A. Petroleum writer.

Q. A writer on the book of petroleum in the matters of tests of hydro carbons?

A. A book written in 1884 and published by the Oil Paint

and Drug Reporters Association. I have owned a copy since 1885, and I value it highly for the interest of its contents.

Q. Who was S. F. Peckham?

A. Special agent of the United States Census office in connection with the census of 1880; he was an eminent writer on petroleum.

Q. Published under the Department of the Interior?

A. Published under the Department of the Interior of the United States.

Q. Who was William T. Brandt? A. He——

Mr. Payne: Is he giving the pages?

The Court: No.

Mr. Swacker: I will give them in a minute.

Q. Who was William T. Brandt?

A. William T. Brandt, a writer on many technical subjects. I know him only by this book written in 1895, which covers the petroleum business at that time, very thoroughly, according to my knowledge.

Q. Petroleum, Its History and its Origin, is that title?

A. Yes, sir.

Q. Going back——

The Court: Go ahead.

Q. Abraham Gesner, what book and page?

A. Pages 37, 38 and 39.

Q. And in the S. Dana Hayes article?

A. American Chemist, 1872, volume 2, pages 401 to 405.

Q. Now, the Chandler article, page 404?

A. Yes, that is included in the report of petroleum, oil advantages and disadvantages, 1872, volume 2, pages 446 and 447.

Q. Now, what is the next, American Chemist Records?

A. The Export of Petroleum, 1874 and 1875.

Q. 1874?

A. Yes, I said 1874 and 1875. American Chemist, 1876, volume 6, page 252.

Q. Now, the journal of the American Chemical Society?

A. That was Journal 1879, volume 1, pages 118 and following.

Q. Now, the Allen Norton Leete book? A. Page 9.

Q. S. F. Peckham report? A. Page 166, 167, 258.

Q. Now, the William T. Randall book? A. Page 38.

Q. Now, hereafter, give the page record as we go on. What is the next one?

A. The next one is from a patent on oil converting prin-

ciples issued to Joseph H. Adams, United States Patent No. 976,975 granted November 29—issued November 29, 1910.

Q. What is the next one?

A. Obtaining naphtha from natural gas by George M. Saybolt, United States Patent No. 989927, April the 18th, 1911.

Q. What is the next?

A. Petroleum by Sir Boverton, Redwood, London, 1913, 3rd Edition, Volume 3, pages 13 and 14 and page 35.

Q. Any further reference, page reference?

A. Yes, sir, page 35.

Q. Any other page reference? A. That is all.

Q. Who was Sir Boverton Redwood?

A. Sir Boverton Redwood was an eminent chemist who had to do with the *controlling* of the laws—of the petroleum laws of Great Britain and his works and for his work he was knighted and he was an authority on the work referred to which in this country probably, until the issue of Bacon and Hamor book, previously referred to, was considered the best authority on the subject, most comprehensive authority.

Q. What is the next reference?

A. Industrial organic chemistry, by Samuel P. Sadtler, Philadelphia, 1912, 4th edition, pages 30 to 32.

Q. Who was Mr. Sadtler?

A. Professor Sadtler was a professor of chemistry of the Pennsylvania Schools of Medicine and is a writer and has been a writer and investigator of petroleum to my knowledge for about 30 years and that is as far back as I know.

Q. What is the next reference?

A. The Manufacture of Petroleum Products by F. C. Robinson, Metallurgical and Chemical Engineering, 1913, vol. 2, pages 389, 390 and 391.

Q. Who is F. C. Robinson?

A. He was chief chemist of the Atlantic Refining Company of Pennsylvania.

Q. Is that a very large refining company?

A. Very large and very prominent refiners.

Q. What is your next reference?

A. The next reference is Physical and Chemical Properties of the Petroleum of California, by I. C. Allen, W. A. Jacobs, A. S. Crossfield, and R. R. Matthews, Technical Paper #74 of the Bureau of Mines, Washington, D. C., 1914, page 10.

Q. You say, has that government publication, does it make any reference to the term unrefined naphtha?

A. It does. This quotation is a definition of unrefined naphtha.

Q. And does it comport with the definition you gave?

A. It does.

Q. What is the next reference?

A. This is a method of converting higher boiling petroleum of higher boiling points into lower boiling points by George W. Gray, United States Patent 11943540, issued on August 8, 1916.

Q. What is the next reference?

A. Do you want to know who Dr. Gray was?

Q. Yes.

A. Dr. Gray has been an oil chemist in many of the prominent oil companies of the country, including the Standard Oil Company of Indiana, the Standard Oil Company of New Jersey, The Texas Company and the Sinclair Company, and during the war appointed Director of the Bureau of Refining of the United States Fuel Administration.

Q. Now, what is the next reference?

A. Refinery Methods and Apparatus, Arthur Neal Kerr, of Tulsa, Oklahoma, United States Patent No. 1199903 granted October 3, 1916.

Q. Now, who was Arthur Neal Kerr?

A. I have no knowledge except being the patentee in this matter.

Q. What is your next reference?

A. Engineering Chemistry, by Thomas B. Stillman, Eastern Pennsylvania, 1916, 5th edition, page 335.

Q. Who was Mr. Stillman?

A. I don't know him otherwise than the author of this book, which seemed to be worthy of reaching the fifth edition.

Q. What is your next reference?

A. The American Petroleum Industry, by Raymond F. Bacon and William A. Hamor. New York, 1916, volume 1, page 129. Also volume 2, page 499. Also volume 2, page 500 and 501. Volume 2, 887.

Q. Who are Raymond F. Bacon and William A. Hamor?

A. Dr. Bacon, who just testified in this case, is the Raymond F. Bacon of the book.

Q. A writer of recognized authority on this subject, or otherwise?

A. He is a writer of recognized authority.

Q. And who is Mr. Hamor?

A. Mr. Hamor is an associate of his, I think he is an assistant in Mellon Institute of Industrial Research.

Q. Is he also a writer of accepted standing?

A. He is a writer of many scientific books.

(Whereupon [] convened after recess duly taken.)

*By Mr. Swacker.*

Q. That work contains reference to the term unrefined naphtha?

A. Yes, sir; the court stenographer has my memorandum.

By the Reporter: I will get it. It will take just a minute.

(Whereupon Reporter leaves court room and returns with manuscript.)

Q. You say Dr. Bacon mentions unrefined naphtha in his own work? A. He does, gives the definition of it.

Mr. Payne: I didn't hear that.

(Answer read.)

*By Mr. Swacker.*

Q. What is your next reference?

A. Obtaining Products from Petroleum by Decomposition and Hydro Carbonates by Horace D. Chamberlain, United States, 122x1790, issued April 3, 1917.

Q. What is your next reference?

A. Mineral Resources of the United States, 1915, United States Geological Survey, Washington, D. C., 1917, page 723.

Q. Is that a government publication? A. It is.

Q. What is your next reference?

A. Mineral Industrial Its Statistics, Technology and Trade during 1918, by G. A. Roush and Allison Butts, New York, 1919, volume 27, page 519, review of petroleum business by David E. Day.

Q. Who is David E. Day?

A. Everybody that knows anything knows about Dr. Day.

Q. Who is he, what is he?

A. Why, Dr. Day is connected with, has been connected for years with the United States Geological Service and later with the Bureau of Mines and carries all the weight, whatever it is, due to much connection in government service.

Q. What is your next reference?

A. Asphalts and Allied Substance, by Herbert Abraham, New York, 1918, page 267.

Q. Who was Herbert Abraham?

A. I am unable to contribute any information in regard to him.

Q. That is a technical work, however?

A. It has the appearance to be.

Q. What is your next reference?

A. Industrial and Manufacturing Chemistry, Part I, Organic, by Geoffrey Martin, London, 1918, 4th edition, page 7.

Q. Who is Geoffrey Martin?



A. An author on the book—merely an author of a book on a technical subject, as far as I know.

Q. What is your next?

A. American Lubricants from the Standpoint of the Consumer, by L. B. Lockhart, Easton, Pennsylvania, 1918, page 9, and at the beginning of chapter 3.

Q. Is that the same gentleman that you mentioned before from Eastern Pennsylvania?

A. I have no recollection of having mentioned him.

Q. Who was he?

A. As far as I am concerned, merely the author of that book, as far as my knowledge goes.

Q. Now, what is your next reference?

A. The Encyclopedia Americana, New York, volume 2.

Q. Volume 2? A. Volume 11, I should say.

Q. Mr. Tabor, have you had much experience in connection with patents?

A. I have had a good deal to do with patents.

Q. Can you say what the practice is with regard to patents with reference to the nomenclature which must be used in describing a process with respect to a patent?

Mr. Payne: I object, this is a railroad tariff and not a patent.

The Court: Yes, I think that is too far away.

Mr. Swacker: Just to show the use of the words.

The Court: I think that is getting too far away. This is a rate case and not a patent case.

Mr. Swacker: That is all.

*Cross Examination by Mr. Payne.*

Q. You spoke of several of those works defining the term unrefined naphtha? A. Two mentioning it.

Q. That all of those works that mention unrefined naphtha?

A. That is all that I have a memorandum of.

Q. The others all refer to naphtha?

A. Naphtha and other chemical subjects.

Q. Refined

A. In its generic and specific sense, refined and unrefined, crude, and various grades.

Q. Crude and unrefined mean the same thing?

A. Yes, sir, two different names for the same thing.

Q. And when it is fully refined, you call it just naphtha?

A. Oh, no, it depends on the trade, the designated name by which it is used. There is deodorized naphtha, stove naphtha, naphtha and a great many grades of naphtha.

Q. Then it would be a part that was refined and a part of unrefined naphtha?

A. It treats, all grades of naphtha are considered in this description.

Q. I will ask you to point out any work, the page number of the work that refers to casinghead gasoline and defines casinghead gasoline to be unrefined naphtha?

A. I haven't, did not seek to, I don't think there is a single reference here to casinghead gasoline. I do not recall, I would have to look through to be sure of it.

Q. Have you read a number of the works on casinghead gasoline?

A. Read a great many.

Q. Did any of those define casinghead gasoline to be unrefined naphtha?

A. I do not recall any at the present time, but I should not want to say it did not.

Q. You don't recall any you read?

A. No, sir, but I don't remember everything I read.

*Further Direct Examination by Mr. Swacker.*

Q. Will you say if the Bacon and Hamor work does not give a definition of unrefined naphtha that comprehends casinghead?

A. It does. As does the government publication previously reported.

Mr. Swacker: I think we have a right now to support that by reading the excerpts, only a couple of lines, each of them.

The Court: Yes, on re-direct examination I will permit it.

Q. Will you read what the government publication itself is on the definition of unrefined naphtha?

A. On page 10 of the Physical and Chemical Properties of the Petroleum of California, by I. C. Allen, W. A. Jacobs, A. S. Crossfield, and R. R. Matthews, Technical Paper No. 74 of the Bureau of Mines, Washington, D. C., 1914, page 10, in which authority is given, the result of the distillation of crude oil, defines unrefined naphtha, defines those fractions that boil in a temperature up to 150 degrees C., equal to 102 degrees, F., atmospheric pressure, in the next sense.

Q. Just a second. Is that within the range of boiling points of casinghead product?

A. That comes within that range. The authorities go on in the next paragraph and describe kerosene, being the next

fraction to obtain, so that these cover all the fractions from the starting of distillation down to kerosene oil.

Q. Now, what does Bacon and Hamor say?

A. Bacon and Hamor say, Vol. 1, page 129, of their work "Naphtha Distillate (Unrefined naphtha) as those fractions which boil up to 150 degrees C under atmospheric pressure.

Q. That is the same definition as that given by the government in their publication?

Mr. Chambers: I object to that as asking for a conclusion of the witness.

The Court: No that is a conclusion.

Q. That last definition that you have just read likewise comprehended casinghead product? A. It does.

Mr. Chambers: We object to that as asking for a conclusion of the witness.

The Court: Yes, that is a conclusion.

Mr. Diggs: Give us an exception.

Q. Is it a fact that all casinghead products involved in this proceeding is the material that boils at a temperature up to 150 degrees Centigrade?

A. They are all below what would be considered kerosene and these authors are intending to cover and the government publications state that they cover the fractions down to kerosene and the fractions below kerosene would cover the low points of this material in question.

Mr. Swacker: That is all.

Mr. Payne: Just a moment.

*Recross Examination by Mr. Payne.*

Q. In referring to this unrefined naphtha on page 9 of the publication you refer to, isn't it a fact that what they were talking about there was a fraction in the distillation of crude oil?

A. Fraction in the distillation of crude oil down to kerosene, the first product which is the definition I give of naphtha from the start down to kerosene.

Q. From crude oil? A. And call it unrefined naphtha.

Q. I believe you stated that that same definition of that fraction of crude oil is given in Bacon and Hamor? A. Yes.

Q. And Bacon and Hamor (Witness corrects the attorney on the pronunciation of the word Hamor.)

Q. Is it not a fact that in Chapter 11, on page 437, the authorities take up the question of condensation of gasoline materials? A. 437, is that the page I referred to?

Q. I will ask you if you recall what unrefined naphtha, what chapter you referred to as unrefined naphtha?

A. I don't remember what is on page 437.

Q. In the whole chapter?

A. I don't remember what is in the chapter.

Q. Isn't it a fact that it is invariably referred to as gasoline?

A. I can't say what is in a book of two volumes, I haven't seen in years.

Q. That is all.

Mr. Swacker: That is all.

(Witness dismissed)

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The Court: Let me have the statute under which these indictments are based. Proceed with the defense, call your next witness.

Mr. Diggs: Mark that defendant's exhibit 142.

Mr. Diggs: Defendant offers in evidence, certified copies of the bill of complaint of the Texas Company against the Texarkana and Ft. Smith Railroad Company, Walker D. Hines, Director General of Railroads, pending in the District Court of the United States for the eastern district of Texas, Texarkana division.

Mr. Payne: I object.

Mr. Diggs: Seeking to recover——

The Court: Let me see what it is.

Mr. Diggs: I have a right to make my offer.

The Court: Yes, but you offer it and I will see what it is.

Mr. Diggs: I am objecting to the United States Attorney jumping in here, which I submit to the court is neither courteous nor an orderly proceeding.

The Court: Very well, both of you stop.

Mr. Payne: And has no bearing——

The Court: Both of you stop.

Mr. Diggs: Does the court prohibit me from stating——

The Court: You are offering this as a certified copy giving the style of the case and number of it and I will see what it is and then you can state your grounds.

The Court: On what grounds do you offer it.

Mr. Diggs: The government introduced evidence in this case in chief, showing certain shipments of cars by this company of these railroad companies, the rates of freight paid—

Mr. Payne: May I interrupt?

Mr. Diggs: No.

The Court: Let him make his statement.

Mr. Payne: May I interrupt a second.

The Court: No.

Mr. Payne: Before he makes it. May I have an opportunity to explain.

The Court: You will be given an opportunity. Proceed Mr. Diggs.

Mr. Diggs: Showing the freight received on the cars, as I understand the purpose of the government in offering the proof and the court admitted it was for the purpose of showing nobody else in that section of the country shipped this article by the name we did and it was unknown but that now we offer this record to show that the specific cars mentioned in that evidence, The Texas Company is now seeking to establish to be unrefined naphtha and recover the excessive rate paid; for the purpose of showing the custom of the country and recognition of the term among shippers and producers of the same commodity.

The Court: Do you object?

Mr. Payne: Surely we do.

The Court: Well, do you object. No, just answer the question.

Mr. Payne: Yes, sir.

The Court: The objection is sustained.

Mr. Diggs: Give us an exception.

Mr. Diggs: Mark these defendant's exhibit, 143-144 145-146-147 and 148, if the court please now in offering of this, I want to say it was offered as a part of the cross examination of the witness in chief and at that time excluded by the court. We now offer the exhibits 143 to 148 both inclusive, being certified copies of the record in the case of the Gulf Refining Company, *vs.* The Texarkana and Ft. Smith Railroad Company.

The Court: Let me see that.

Mr. Diggs: Pending in the District Court, of Texas solely for the purpose, solely bearing on the motive of

the defendant, that is the only purpose we claim they are admissible for, the bearing on the motive of the defendant.

Mr. Diggs: It has been suggested to me by other counsel that the word "motive" is not sufficient, so I offer it for the purpose of proving both motive and intent.

Mr. Gann: The government objects.

The Court: On what ground.

Mr. Gann: On the ground that it is not relevant to the issues in this case, a matter pending in another jurisdiction.

The Court: Now, what is the last allegation in the indictment? What is the date?

Mr. Gann: May 16, 1919.

Mr. Diggs: None of the cars described in that are included in the indictment, I understand?

Mr. Gann: This proceeding was instituted on July 24, 1919, after the close of the transaction charged in the indictment.

Mr. Diggs: It is only offered for the purpose of motive and intent.

The Court: I can understand how, if a suit was filed, that would be evidence then of the good faith where they brought a suit and set it up, but not afterwards.

Mr. Green: Your honor, you see this was six months before the indictment was returned. We make the point in that way—we could be deprived of our defense, because that occurred long before the indictment and being arbitrarily stopped, the indictment might just as well have gone on.

Mr. Diggs: May I suggest to the court, the article was shipped; as long as it was delivered to us, we could show no step to show honesty of intention——

The Court: I will sustain the objection.

Mr. Diggs: Give us an exception.

The Court: Very well.

Mr. Diggs: Will your honor permit us to determine until in the morning to see whether we offer any further proof?

The Court: Very well. I will give you an opportunity to offer it. I want to proceed this afternoon.

Mr. Green: We have still these experts to recall.

The Court: Very well.

Mr. Diggs: Well, your honor, give us about ten minutes before we proceed.

The Court: Sure.

Mr. Payne: I don't think the expert testimony——

The Court: What is that?

Mr. Payne: I don't believe it would be fair for the experts to testify after our experts are on the stand.

The Court: They will only be recalled for specific matters.

Mr. Payne: They are liable to branch out.

The Court: I want to be fair with the expert witnesses in this case. I will control this case, and we are going to get through with this case. We will have to stop all of this today until day after tomorrow morning. They can't complete that until they have made that report.

Mr. Payne: They are going down this afternoon.

The Court: The statement was made it would take a day.

Mr. Payne: If it was thoroughly done, it would take longer than that.

The Court: This objection—I think you ought to think about it before you make objections in this case. This will delay——

Mr. Payne: I don't want to delay.

The Court: Now, naturally, they have a right to recall their experts for specific purposes. Your request that I say is all true——

Mr. Payne: No, sir.

The Court: That is what it means.

Mr. Payne: Just adjourn until tomorrow morning.

The Court: Why do you want to adjourn until tomorrow morning?

Mr. Payne: So that the defense can complete their case.

The Court: They can't complete their case, that can't be completed,

Mr. Payne: They are going down this afternoon, and I think they will complete it tomorrow.

Mr. Green: He is the very one that stated it would be.

The Court: Never mind. I don't need any suggestions from you.



Mr. Diggs: We rest, if the court please, but would like to reserve the privilege if we have overlooked anything, any paper that we want to offer in evidence, but I think, however, we have finally concluded.

The Court: I will let that reservation go to the discretion of the court, but if you can show me—

Mr. Diggs: If I want to offer it, if I can not show the court I am hurt by leaving it out, I will not ask to get it in.

The Court: I think this, as to these experts, they—that are to be recalled and testify, the rule on them ought to be on them while these other experts testify.

Mr. Diggs: We have no objection to the rule nor—

The Court: I don't know how many experts the reservation was made, was made to be recalled to testify further.

Mr. Diggs: Colonel Burrell—

The Court: Of course, he is not here. I remember—

Mr. Diggs: Dr. Garner and Dr. Bacon.

The Court: They are neither one here this afternoon, anyway.

Mr. Swacker: You mean other experts outside of them?

The Court: No, they are not to be recalled to testify further in chief, those—it is not to apply to them, because you may want to have them here. The evidence of the government experts, to hear that for the purpose of using them, and I will pass on the other question, as to whether or not the rule should apply to those, I just make this as a suggestion, in view of the statement of the government that it was unfair with them to proceed with that reservation; that was a suggestion made to my mind. I was trying to equalize the order, so you may now proceed with the rebuttal.

Mr. Chambers: This evening?

The Court: Yes.

Mr. Chambers: I think your honor better let us get together and line up our witnesses so we can commence in the morning. We never thought about commencing this evening.

The Court: I supposed you knew who you were going to put on the witness stand first.

Mr. Chambers: We would like to talk that over first.

The Court: If you state you think you need the time, I will grant it.

Mr. Chambers: I think we need it. It would be better to talk it over and determine which witness we want to use first.

Mr. Swacker: I think their experts ought to be precluded—

The Court: Well, you may have until tomorrow morning, then, to rest.

Mr. Swacker: I think we ought to put the rule on their experts talking to these experimenters. We put our experts on to testify and gone through this thing and then it is not a very fair proposition—

The Court: We will determine that in the morning. The jury will separate, under the usual instructions, and you may go now, under the admonitions heretofore given you by the court until tomorrow morning at nine o'clock.

Mr. Chambers: Nine o'clock, your honor?

The Court: Yes.

(Whereupon, the jury retired from the court room.)

The Court: Court will now take a recess until tomorrow morning at nine o'clock.

Whereupon, court took a recess until nine o'clock a. m. tomorrow morning.

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MORNING SESSION.

April 21, 1920, 9 A. M.

(Whereupon, court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and the jury having been called by the clerk and all found to be present, and counsel for plaintiff and counsel for defendant having announced they were ready to proceed with the trial of this cause, the following proceedings were had and done, to-wit:)

The Court: With reference to Exhibit 139, relating to order No. 1, of the Director General of Railroads, I quote this excerpt from the proclamation of the President taking over the railroads which was of date December 26. I believe: "Until and except so far as said Director shall

from time to time, otherwise by general or special order, determine, such systems of transportation shall remain, subject to all existing statutes and orders of the interstate commerce commission, and to all statutes and orders of regulating commissions of the various states in which said systems or any part thereof may be situated. But, any orders, general or special, hereafter made by said Director shall have paramount authority and be obeyed as such." Order No. 1 is dated December 29th. Now I take it that Order No. 1 comes under these words "But any orders, general or special, hereafter made by said Director shall have paramount authority and be obeyed as such." Now, paragraph 7 of Order No. 1 is as follows: "Existing schedules or rates and outstanding orders of the Interstate Commerce Commission are to be observed, but any such schedules or rates or orders as may hereafter be found to conflict with the purposes of said proclamation or with this order shall be brought immediately by wire to the attention of the Director." So the objection to the admission of this order in evidence is overruled.

Mr. Swacker: May we have our exception.

The Court: Yes. Now, I don't pass on the question raised by the government that under the case in 235 United States that to all intents and purposes this would be treated as a rate promulgated, transportation rules and orders. I don't pass on that question.

Mr. Swacker: Our objection is, it is not in compliance with the statutes and the proclamation.

The Court: Very well, proceed with the trial—now, the announcement that the defendant closes—stands—yesterday?

Mr. Swacker: We have one other thing.

The Court: All right.

Mr. Swacker: We want to ask the court to notice, and we introduce as evidence the Oklahoma statute affecting gasoline. Section 4353 of the laws—the revised laws of Oklahoma, 1910.

The Court: I will permit them to go into the record for the advice of the court, not to the jury.

Mr. Swacker: Our theory—

The Court: The court takes judicial knowledge—

Mr. Swacker: You have admitted a good deal of evidence to show the use of words, and I think that is proper evidence in that class, aside from the legal effect.

The Court: Any objection?

Mr. Chambers: We object, incompetent, irrelevant and immaterial.

The Court: You use the word unrefined naphtha—if you had used that word, I would let it go to the jury. I would like to know——

Mr. Swacker: Most of the evidence has been used on the word gasoline.

The Court: I will let the word and the term the way it is used gasoline, benzine, naphtha and other easily inflammable liquids of petroleum shall not be tested as flash tests but said fluids shall be tested as to its specific gravity.

The Court: I will let that part go in.

Mr. Swacker: The next succeeding part is what we want particularly.

The Court: That does not go in. These words are not used——

Mr. Swacker: It is descriptive of the words just preceding.

The Court: This does not relate to anything—it might be possible that it might be admissible on cross examination of an expert where he was testifying as to specific gravity. That is the only part that I will permit to go to the jury for the present. It may be it can be offered later under such shape as might be admissible.

Mr. Swacker: We, of course, don't want merely the part that has been read without the whole.

The Court: Very well, I will admit that much. But if you don't want it admitted without all of it, it is not incumbent on you to insist on a part, but I will not let all of it in, but I will let the part that used those terms go to the jury.

Mr. Swacker: Then may we offer the whole? If I understand the ruling of the court, you will exclude it then?

The Court: I will permit you to offer this much, and if you don't want any of it unless all——

Mr. Swacker: That is correct.

The Court: Then I exclude it. I understand the government objects.

Mr. Payne: Yes, sir, we object to that as not bearing on the question in issue as to whether or not this was gasoline.

The Court: I will exclude it.

Mr. Swacker: May we have an exception?

The Court: Yes.

Mr. Swacker: Now, we have a certified order of the Corporation Commission of Oklahoma on a proceeding pending before it, an opinion using certain expressions and descriptions involved in this case. We would like to offer this.

The Court: What is the date of that?

Mr. Swacker: Sometime in 1917. Does it not state so?

Mr. Gann: If your honor please, the government objects on the ground it is immaterial. The objection is to the reasonableness of the rate—

The Court: I think this much of it is competent, that an application was made some time in August, 1917, to the—by the Anderson Gasoline Company, where is it located?

Mr. Swacker: Nowata, I believe.

The Court: Nowata, Oklahoma, for an intrastate rate on shipments of unrefined naphtha or naphtha distillate and that the petition was denied.

Mr. Swacker: That is all it is offered for, showing the use of the term by others.

The Court: I will permit it that far. Any objection?

Mr. Payne: That is objected to, on the ground there is nothing in that opinion showing that this is the same as referred to here.

The Court: That is a matter, that is a matter to consider like all evidence. Now, they object to you showing evidence prior to December 2, because you didn't show the rates were identical, I let that in for two reasons: first, to show the practice in the business, and another was the evidence tended to show that the traffic manager of the Gulf was in fact the traffic manager of the Gypsy on the first the practices was in August, 1907—(1917) I can't tell when this is filed; this is on August 26th or August 28th. They are seeking rates on unrefined naphtha or naphtha distilled, the practice among refiners.

Mr. Gann: That is understood, but it is the blended material, your honor.

The Court: Well, that is all right for you to show that. But here is the use of the term; that is a matter of evidence. I allowed you latitude now in showing the use of terms among the refineries of the state. Surely they are entitled to the same rule.

Mr. Gann: We don't object to that. I think, also, there should be a statement that the value——

The Court: I just let this go to the jury for just what I stated, and they say that is all they desire.

Mr. Gann: Very well.

Mr. Swacker: I assume it will not be necessary to offer the paper. It will just go in on your honor's statement of facts.

The Court: Yes.

Mr. Swacker: Your honor still has under advisement our offer of the Texas statute.

The Court: Yes. I will pass on that now. I will exclude that for two reasons: first, because for all purposes of this case, the court takes judicial knowledge of it. Second, that statute was passed by the legislature in February, 1919, and did not go into effect until after the last date mentioned in the indictment, and on the question of showing dates, the terms used for that purpose, it appears to me to be too remote. And that act says, "For the purposes of this act." That might be a two-edged sword. The things that are excluded by the implication is but for that act, then that would be the name of it.

Mr. Swacker: The purposes of the act as stated——

The Court: In prescribing the gasoline to be sold and nothing else to be called gasoline. But now that, that act does not become effective until the last date in this indictment, now the converse seems to be true that by that act, then the other commodities not within these markets described would be called gasoline.

Mr. Swacker: We would not agree to that.

The Court: The way that occurs to me, it says, for the purposes of this act, the words gasoline was used alone or in connection with other words is applicable only to the petroleum products complying with the following named minimum and requirements, that act was approved March 24th, 1919, and became effective 90 days after adjournment. The legislature of Texas I think adjourned in May. But even that was the last date—no, adjourned about the first of March, the legislature, March, April, May, let's see, what the date is they adjourned. Mr. Green, you ought to be able to tell me that.

Mr. Green: There has been so many sessions, special sessions, I could not state without referring to it.

Mr. Swacker: On this question, I would like to show

your honor, call your honor's attention to this, that this was passed long before this indictment was returned and we should not be robbed of our defense by the government stopping the indictment short, short of some point, that just where the indictment is——

The Court: No, they adjourned the 19th day of March, 18, 18th day of May, so that would be in June. We have to pass on it because in the trial in this case, the government does not seek to hold you for any offense beyond that later than alleged in the indictment.

Mr. Swacker: But your honor has admitted the evidence, subsequent to then.

The Court: I let you introduce evidence.

Mr. Swacker: You let them, issue subpoenæs duces tecum up to May the 31st, 1919.

The Court: I did not let them offer them in evidence.

Mr. Swacker: I think there is some evidence offered by them afterwards.

The Court: If there is evidence offered that is later than the date alleged in the indictment, as to any act on the part of the defense, it is excluded and the jury are admonished and instructed not to consider it.

Mr. Green: We think in order to get the benefit of that, the evidence should be selected——

The Court: Very well, you call my attention to it and I will strike it out.

Mr. Green: It is our position that this is admissible as a use of words and terms and having been passed by the legislature of Texas, while it went into effect before this indictment was returned a number of months, before the indictment was returned, we take it that the recognition by the legislature, a legislative body in the state where we are residents of the correctness of our position as to what gasoline is, in other words, that has been our notion of gasoline all time, in other words, this is a legislative body and this was the idea of the legislature and we are deprived of this defense because the government stopped the indictment.

The Court: No, no, I don't think it is competent.

Mr. Green: Note our exception.

The Court: Very well.

Mr. Diggs: We rest.

The Court: If I represented the prosecution I would



agree that would go in and ask the court to instruct the jury that that limited the term gasoline and that it was broadened up to that time.

Mr. Payne: If we didn't think it was error, we might, your honor.

The Court: Proceed.

Mr. Diggs: Defendant rests.

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The Court: The defendant rests. Proceed.

Mr. Payne: Call Mr. Moss.

Mr. Payne: May it please the court before we proceed with this witness, we find in checking over the record that a number of exhibits are in, but apparently there is no formal offer of them.

The Court: There was a general order made that all exhibits where they were identified that they would be marked and read into the record. That applies to exhibits on the part of the defense and the government.

Mr. Payne: So it may be considered——

The Court: That was the general order one day and if there is no objection that will apply to each exhibit that was identified.

Mr. Diggs: That is the condition of the record at present.

The Court: Yes, I made that order and that applies to the defendant's exhibits. There are a whole lot in the same status. The statement was made that where they were marked by the reporter, the court reporter would mark them read to the jury.

Mr. Payne: The point was, however, as I was told, that the exhibits were referred to, but not formally offered in evidence, although the court admitted them and we just wanted the record to show.

The Court: That was done to save time.

Mr. Payne: I now offer all this in evidence.

The Court: No objection, either on the part of the defense or the government, and that exhibit will be considered in evidence and shown in the record as read to the jury.

Mr. Payne: Before proceeding with this witness, I would like to understand the status of that test.

The Court: That is not a proper statement to be

made before the jury. You want to find that out—has it been made.

Mr. Payne: It has. I take it the defense will not have any further opportunity to put any of their witnesses on the stand.

The Court: They can offer the evidence now as to that if they are ready.

Mr. Swacker: We can offer it now.

The Court: All right.

Mr. Swacker: I understand they have not got the laboratory test yet, but can do that this afternoon—call Colonel Burrell.

Whereupon, COLONEL BURRELL was recalled to the witness stand for further redirect examination and testified as follows:

*Further Direct Examination by Mr. Swacker.*

Q. Colonel Burrell, did you make any subsequent test of the material manufactured at Jenks in company with the representatives of the government? A. I did.

Q. When did you make it? A. Last evening.

Q. Will you state just exactly what was done?

A. We proceeded to the Jenks plant of the Gypsy Oil Company, in accordance with the instructions of the court with representatives of both the government and the defense, two cars were used in the test, one a Pierce Arrow car, selected by the government, and one a Packard car, selected by the defense. This, however, was a different Packard car from the one we first used. Arriving at Jenks, the material, gas, natural gas condensate was withdrawn from what is called the make tank, that tank from which shipments were made at Jenks and weathered to a vapor tension of about ten pounds per square inch, a little under, I think. Five gallons of this weathered material, representing the material such as has been shipped from Jenks to Port Arthur in the past was put in each car, five gallons in the Pierce Arrow car, the government's car, and five gallons in the Packard car, the car of the defense. One representative from the defense accompanied the government men in their car. And one representative from the government accompanied us in our car.

Q. Which car were you in?

A. I was in the Packard car, the car belonging to the defense.

Q. State the occurrence with respect to the car you re-

mained in, as distinguished from the car in which somebody else went.

A. Yes. My observations were very largely confined to the Packard car, and we decided to run from the town of Jenks to the town of Kiefer, a distance of about twelve or thirteen miles, the country being comparatively flat and no hills of any consequence, and a very—

Q. What was the atmospheric condition?

A. The atmosphere was approximately fifty degrees Fahrenheit. A breeze was blowing, and I might say this—the atmospheric condition has a decided effect on the action of a motor car.

Q. Well, in what way, what influence did that have?

A. On a hot humid day, the car, the metal parts become heated to a greater extent than on a cold day, because there isn't the same chance for conduction of heat from these metal parts to the hot humid air. In other words, they are more nearly the same temperature. If your outside temperature is low, the flow of heat isn't as rapid. On a cold evening the car becomes heated less.

Q. Do you say, then, whether or not the conditions were favorable to the test?

A. I can say this, about automobile operation, that in cold weather, their casinghead gasoline, if it works at all, will work better than in warm weather.

Q. Go on and tell what happened.

A. The machines were started cold. This is, of course, favorable to the usage of natural gas condensates or gasoline, and, of course, it is different from the customary procedure, where one drives up to a curb station with a running engine and fills his tank at that station, and starts on his way. So I should say again that conditions were more favorable for the natural gas gasoline test than if the engines were started hot. Six or seven people were in the Packard car. It started without any difficulty and ran to within about nine or ten miles of Kiefer.

Q. Ran to within nine or ten miles?

A. It ran about nine or ten miles, that is, within two or three miles of Kiefer, where it absolutely stopped dead, and no amount of persuasion or adjustment on the part of our driver could make it go. Now, up to that time, its performance had been, I should say, very unsatisfactory. On the grades that I spoke about, because no hills of any consequence were encountered, the car lacked power. A Packard is a high powered car, a speedy car. It absolutely lacked power. It puffed and wheezed considerably, in other words, the engine acted in a very unnatural way. The car was abandoned two or three

miles from Kiefer and we proceeded on our way in another car to Kiefer. Every opportunity was given the government representative, any suggestion he had to make was taken advantage of, and it was with his full agreement and sanction that the car was abandoned as being unable to proceed any further.

Q. Then what did you do?

A. We proceeded to Kiefer, where further tests were made on the unrefined naphtha such as was formerly shipped from Kiefer to Port Arthur.

Q. That is blended or unblended? A. Blended.

Q. What happened there?

A. This unrefined naphtha or blended condensate or blended natural gas gasoline was perhaps in the ratio about 30 parts of naphtha, of about 56 gravity, with 70 parts of the natural gas condensate. It took a long time to prepare this material, I presume we waited and worked on the mixture three or four hours before it was finally secured of the proper proportions and of the proper vapor tension, the vapor tension was about nine and 8/10ths pounds, I believe. It was thoroughly agreed that it followed strictly the specifications of the unblended naphtha such as was formerly shipped from Kiefer. Five gallons of this material was finally put in the Packard car and I witnessed five gallons being put in the Pierce Arrow car, the same men who were in the Packard car in the test at Jenks were in this car in this test at Kiefer.

Q. Did you see how much of this gas was used in running the ten miles that you did run?

A. I think I made a notation to that effect, I will have to refer to my notes, if I made them, it was very approximately, I have not got that data with me, it is possible and probable that one of the other witnesses have it.

Q. Then you say that you put five gallons in the Packard at Kiefer? A. Yes, sir.

Q. What next?

A. I want to say again that was a different Packard car than the car we first used. We proceeded on our way with the government representatives accompanying us. I can say we had so much difficulty in starting the car that it was almost, it was almost officially pronounced abandoned. Finally, it was started and I have seldom ever, if ever, witnessed a more unsatisfactory performance of a motor car. The road was hilly; we proceeded from Kiefer to Tulsa and the car did everything that a car with a good grade of gasoline should not do. It had no power on the hills and on some of them—none of them were extraordinary hills, we would creep to the top at a speed or perhaps two miles an hour on low—on the level stretches of road there was no speed of consequence in the car at all, it

behaved abominably. We got to within two or three miles of Tulsa, and it again came to a dead stop, this was about two o'clock in the morning, but we had adopted the precaution of having a truck follow us with good gasoline. We did our utmost to start the car, and the test was abandoned, and we took some gasoline from the truck and placed it in the tank. About three inches of the Kiefer gasoline was in the tank and five gallons of good gasoline was poured in on top of it. Even so, we had a great deal of difficulty in getting what little of the Kiefer gasoline remained in the carburetor out of the way, and we were almost forced to walk home. Finally we got the carburetor running and started the car, and on this gasoline came in wonderfully, because the fact is a Packard car will run good if it gets a chance.

Q. Now, how long had you been in getting from Kiefer to Tulsa?

A. Well, I don't recall. It was a very long time for a motor car.

Q. Did you—

The Court: How far from Kiefer to Tulsa?

A. About fifteen miles.

Q. About what time did you leave Kiefer?

A. I didn't take the time.

Q. Well, haven't you any idea, approximately?

A. Somewhere between eleven and half past eleven, I think.

Q. Then you were approximately three hours making this twelve miles?

A. Somewhere between two and a half and three hours, I believe. You can get those exact figures from one of the other witnesses, I don't recall very clearly.

Q. What was the best speed the car made, and what would it ordinarily be capable of making under conditions containing gasoline?

A. It is very difficult to say accurately, because the speedometer on the car was out of working order; but I should say, on a good level stretch of road, where the car should easily make sixty miles an hour, and I have traveled sixty miles an hour over that road, a level stretch of road, we probably could make 25 miles out of it, but just as soon as we struck the slightest grade, we were lost.

Q. What were the atmospheric conditions, as to the temperature during the Kiefer to Tulsa test?

A. The weather was cool.

Q. Cooler than earlier?

A. Yes, it became cooler as the evening wore on.

Q. Given the same material and the temperature conditions on the previous test, what, in your judgment, would have been the result?

A. My judgment is it would not run the car at all.

Q. Would not have run the car at all?

A. No. I look upon this mixture as being one that under some conditions, favorable conditions, would run a car in a very unsatisfactory manner. On other conditions less favorable to the gasoline but under conditions under which motor cars had to be operated, it would not run. Many things influence the running of cars, especially if one has a mixture control, weathering conditions, adjustment of the carburetor, condition of the car, operator of the car, and so forth, although these cars were run by chauffeurs, men who make their living running cars, make most of the minor repairs themselves because it saves them money to do that. They were more experienced men in my judgment than the many thousands of people who operate them for pleasure only.

Q. This was a public car, was it, hired?

A. This was a public car, hired car.

Q. Have you ever seen a car of this character operate on material not at all pretending to be gasoline?

A. Will you restate your question some other way.

Q. My question is, have you ever seen other materials such for instance as crude oil actually propel such a car as that? A. I have.

Q. In other words, you could do as much as you did last night with crude oil, is that correct?

A. I have in mind a particular variety of crude oil which would run the car infinitely better than the material we are speaking about, I have tried it.

Q. What do you say, whether you could do that much with kerosene?

A. I could; I could do better with kerosene.

Q. Was there any nursing of air or anything of that sort to get it to do what it did do?

A. In endeavoring to keep it going, everything the chauffeur could do to it was done.

Q. You drained all the other material out of the car each time when you made the test?

A. Both cars were thoroughly drained and every opportunity given the other side to inspect them.

Q. What did you have? Ordinary curb gasoline going out?

A. Ordinary curb gasoline going out there.

Q. How did it run going out?

A. We did not come out in this particular Packard car,

but after coming back, after we had replaced the natural gas condensates with ordinary curb gasoline, it behaved splendidly and finished the last two or three miles.

Q. What was the condition of the engine on each of the occasions when it finally stalled?

A. I would consider it was very hot.

*Cross Examination by Mr. Payne.*

Q. Did you adjust the carburetor on the car, was there any change made in the carburetor?

A. I did not touch the car.

Q. Did not touch the carburetor? A. No, sir.

Q. Is it not a fact that by adjusting the carburetor you can use the lightest of gasoline?

A. I would not admit that.

Mr. Payne: That is all.

Mr. Swacker: Just a minute—

*By Mr. Swacker.*

Q. Have you made, is it the practice, a practical proposition to adjust the carburetor to such an extent as might use this material and utilize the car for ordinary purposes in such cases? A. I do not consider it practical.

Mr. Payne: I object.

The Court: What is it for?

Mr. Payne: I object to this question.

The Court: On what ground?

Mr. Payne: The practicability has no bearing on this.

The Court: You asked him if there was a carburetor on the car and if he attempted to adjust it, and they asked him that, to show, as an expert, why he did not try.

Mr. Payne: Well, that is not the question, whether or not it is practical.

The Court: He may state why he did not, if he thought it was not practical—that joins the issue. You can show it is practical. I think that is competent.

Mr. Swacker: No question about it.

The Court: I have ruled on it. Proceed.

Q. I asked if it would be a practical proposition to adjust a carburetor so as to make possible such a performance so you might use the car?

A. I would not consider it practicable, it is my experience



the average purchaser of a car is instructed little or not at all in the operation or construction of carburetors. Most of them, when they buy a car, and I include myself, in that the first car I purchased, about all that I would know is to turn the wheel and blow the horn——

The Court: That is not the question, does a man know, who is an expert——

Mr. Swacker: My question is this, whether——

The Court: For an expert to do that.

Mr. Swacker: My idea is this. This material as gasoline——might this material be used as gasoline, necessarily, to have a carburetor in order to use it.

The Court: That is another question.

Mr. Swacker: That is the one——

The Court: That is not the question.

Mr. Swacker: Did you do everything that was suggested by the government representatives in order to make the car work?

A. In my opinion, we did try to be very fair with them.

Q. What would you say, whether that material is or is not gasoline? A. It is not gasoline.

Mr. Swacker: That is all.

The Court: Just a minute. Dr. Burrell was on the stand the other day and a juror wanted to ask a question and I told him he could ask the question when Dr. Burrell was recalled.

The Juror: One thing, I wanted to ask, the distillation of a certain commodity, you said you made a distillation test?

A. Yes, we made a distillation test.

The Juror: I didn't get what you said was the recovery?

A. The recovery of the gasoline material?

The Juror: You said 83 per cent.

A. I said——

The Juror: Well, suppose you take 100 gallons and the distillation test, just the distilling——

A. Yes.

The Juror: You take 100 gallons and distill it, you get 83 gallons of what?

A. 83 gallons of the material you start with and lose the other 17 gallons in the air.

The Juror: What would the 83 gallons be?

A. It would be the remainder of this unrefined naphtha after the lighter portions, most of the lighter portions would have been lost in the air.

The Juror: That is all, I didn't get that clear in my mind.

Mr. Payne: That is all.

(Witness dismissed)

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Mr. Payne: May it please the court, I think one expert on each side would be sufficient to tell all the story.

Mr. Swacker: Well, they can't for this reason. One went in one car and the other in the other.

The Court: Well, one expert for each car.

Mr. Swacker: I would like to call Dr. Garner to give the distillation tests of the material used.

Mr. Payne: We only had one expert there.

The Court: Which car did Mr. Dykema go in?

Mr. Payne: He went in the government car and Mr. League in the other car, he is not an expert.

The Court: Well, I will not require you to put anyone on except the expert. You ought to want the expert to go with this man that you are going to put on.

Mr. Payne: We are willing.

And thereupon, DR. RAYMOND F. BACON was recalled as a witness for and on behalf of the defendant, testified as follows:

*Direct Examination by Mr. Swacker.*

Q. Dr. Bacon, did you participate in the tests made last night that Colonel Burrell has just testified in relation to?

A. I did.

Q. What did you do?

A. At the Jenks plant after the casinghead naphtha was prepared as Colonel Burrell has already testified, I went in the government car, the Pierce car. Do you want me to testify what happened?

Q. Yes, go right on and tell everything that happened.

A. The car was absolutely cold at the time we started and the car started alright and it ran apparently satisfactory nearly for about the first six or seven miles. I did not notice

any, did not notice anything but what the car was running alright for the first six or seven miles and then I noticed the engine was in trouble, the car first began to lack power and began to miss and was very evidently in trouble and this trouble continued until about just eight miles and the car stopped and the driver could not start it. The driver continuously trying to start it and every minute or so and it took 14 minutes at that point to start the car. I beg your pardon, it took 12 minutes to start the car and the car got started again, first half a mile after the car got started, the engine was still in trouble and had a little trouble and looked like it would stop again, but managed to keep on and after the first half a mile it seemed to pick up and run very well until we got almost to the plant at Kiefer and about a hundred yards out of the plant at Kiefer it stopped again and could not start it and it took five minutes to get it started in the second case and got it started and ran it into the plant at Kiefer; then as regards the second material, we put the blended or naphtha and casing-head condensate in the car, in the Pierce Arrow and the car started alright and the car ran all the way back to Tulsa without stopping; now it ran in fairly satisfactory manner, in fact, the only thing I noticed about the car in running back on this condensate it popped a few times and there was one hill in particular, it performed very badly. It almost stopped and the driver threw it into second and had a hard time getting up on second going rather slow, going six or seven miles an hour to get to the top of the hill and then it picked up again but it did not stop on its way from Kiefer—all the way to Tulsa.

Q. Was it necessary to do anything in the way or particular driving or manipulation of the air in order to accomplish this?

A. I thought the driver did manipulate the air as far as he could from his seat.

Q. What would be the effect of that? A. Well, of course, the reason these materials will not run a car, particularly if it is warmed, you are liable to get a very rich mixture in the cylinder, too rich to explode and if a man can manipulate the air far enough he can nurse the car along. I presume if the car was built right, there might be some way to make such mixture run a car—an ordinary car, it will not do it.

Q. Have you seen crude oil operate a car?

A. I have, yes.

Q. Will you say whether it was possible to operate the car as satisfactory as by the operation of crude oil?

A. I think undoubtedly crude would operate that car in a more satisfactory way. One thing I couldn't tell you what power the car had, the car run along pretty well coming from

Kiefer to Jenks and from Jenks to Tulsa, but the only man who knows is the driver, he can tell whether the car is delivering the power.

Q. Can you tell how much gasoline was consumed from Jenks to Tulsa and Tulsa to Kiefer? A. No.

Q. You don't know how much was left when you got there?

A. We intended to measure it, but there was evidently some mistake on the experts, and the first thing we knew they had poured the gasoline out.

Q. You don't know what quantity was used? A. No.

Q. What was the temperature taken by you in the Pierce car?

A. The temperature, as I recall them—at the time we left Jenks for Kiefer, the temperature of the air was 64 Fahrenheit. At the time we left Kiefer for Tulsa, the temperature of the air was 54, and at the time we got to Tulsa, the temperature was 46.

Q. Now, in your opinion, would you be able to have gotten even as good performance as you did under the conditions under which you performed the previous test you testified with relation to? A. You mean the crude oil?

Q. No, I mean the test you made previously with the material you got from Mr. Sanderson a few days ago?

A. I think the difference in the test was probably due, or at least largely due to different temperatures of the air, and I am inclined to believe if the test as we made it last night had been performed on a warm day, that the result would have been very similar to the result we obtained in the previous test.

Q. That is, that it wouldn't run at all?

A. I think probably it wouldn't run at all, but if it had, it would have stopped very quickly. We never could have done what we did in the second test last night.

Q. Will you say whether or not that material was gasoline? A. In my opinion, it was not gasoline.

Q. You say in your opinion it was not gasoline?

A. No, sir.

Q. Would you consider any material which would perform like the material here in question did perform last night, gasoline? A. No, sir.

Mr. Swacker: That is all.

Mr. Payne: No cross.

(Witness dismissed)

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Mr. Swacker: Dr. Garner or Dr. Schock here? They are making distillation tests.

The Court: I will let one for each side testify as to that. Is that all of this?

Mr. Swacker: Yes, sir.

The Court: Now, you can introduce the experts that went with the Pierce Arrow car, then you can introduce this other man to show the extent of his knowledge. The defendant's witnesses testified they made every test in trying to operate the car, every suggestion offered by the government man, let the jury see if you want to. You may proceed now. The record shows now the defendant closes with the reservation to introduce the chemist as to the distillation test.

Mr. Payne: That will be limited just to the distillation test.

Mr. Swacker: I think we are entitled to have Dr. Garner to testify to what he saw. There are ten witnesses——

The Court: Who is Dr. Garner?

Mr. Swacker: He went with Colonel Burrell.

The Court: If you want to introduce him——

Mr. Swacker: We cannot do it right now because he is out making the test.

The Court: Very well, I will let you call him, but you must watch him and keep him under the rule. Proceed.

Mr. Payne: Are you going to allow him to testify after we put on our witnesses?

The Court: He will just merely testify about the test, about the Packard car.

Mr. Payne: It will be merely cumulative. We don't dispute the test.

The Court: I will control that, now you proceed.

Mr. Payne: Call Mr. Moss.

Whereupon, ELISHA ARTHUR MOSS, a witness on behalf of the Government, was called in rebuttal and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your full name, Mr. Moss.

A. Elisha Arthur Moss.

Q. Where do you live? A. Jenks.

Q. What is your business?

A. Well, I am running the gasoline plant, operate a little production.

The Court: Whereabouts?

A. Jenks.

Q. What is the company you are with?

A. Brady, Swanson & Calley.

Q. Did you sell some gasoline to a party that came to your plant the night before last about half past nine?

A. I did not sell any.

Q. Did the Bureau Inspector and myself and Mr. Gann?

A. I did not sell any.

Mr. Swacker: I object, as being irrelevant, incompetent and immaterial.

The Court: The objection is overruled.

The Court: Well, did you furnish it to him?

A. Yes, sir.

The Court: When was that?

Mr. Payne: Night before last.

Q. What kind of gasoline was that?

The Court: Describe what the commodity was.

Q. Describe what the commodity was.

Mr. Swacker: Your honor understands this is no part of the test made jointly.

The Court: Very well. I am going to let this evidence in of this independent test, and I will let your evidence in of your independent test, stand before the jury.

A. It was just raw casinghead gas.

*By Mr. Payne.*

Q. Did you take the gravity of it? A. No, sir.

Q. Did you see it done? A. Yes.

Q. What was the gravity? A. I—

Mr. Swacker: We would like to have the privilege of cross examining the witness on the manner of producing before showing what was accomplished in the test. It is a different class of material—if it is a different class of material, we say it is irrelevant.

*By Mr. Payne.*

Q. Did you put that gasoline in the automobile?

A. Yes, sir.

Q. What make of automobile was it, did you notice?

A. I never noticed.

The Court: Hold on. I will let them have the privilege of laying the predicate for their objection.

Mr. Swacker: Mr. Moss, what character of plant did you operate? What character of casinghead plant did you operate?

A. High and low stage.

The Court: Compression or absorption plant?

A. Compression.

*By Mr. Swacker.*

Q. Did you have expanders on your plant? A. No, sir.

Q. Do you know what kind of plant the Gypsy has, whether that has expanders on it or not? A. I do not.

Mr. Swacker: We suggest there is no proper foundation laid to take this testimony in evidence.

The Court: I will permit it, with the understanding that you are to introduce what the difference is between compression plant with expanders and without expanders.

Mr. Payne: Allow me to do that?

The Court: Yes, if you don't do that, I will strike this evidence out. It was admitted yesterday that that didn't make any difference. I will permit it only on the understanding that evidence will be introduced to support that contention and if it is not, I will strike it out.

Mr. Swacker: Yes, sir. I think, of course, before additional evidence is offered, that should be established because it is a necessary predicate.

The Court: Very well, it is within the power of the court to regulate the evidence. If it is not connected up I will instruct the jury not to consider it.

Q. What did you state was the gravity of the gasoline?

A. Eighty-five.

Q. Did you see the tank of the automobile drained of the gasoline it already had in it? A. I did.

Q. And you put the 85 gravity raw gasoline right into the tank? A. Yes, sir.

Q. And did you see them drive away in the car? A. I did.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Mr. Morris, did you examine the performance by the parties there handling that car to see whether they drained the car completely of the gasoline theretofore in it?



A. It was drained out of the tank in the rear.

Q. Well, do you know whether they drained out the reserve tank? A. I do not.

Q. Then you don't know but that the gasoline in the reserve tank is what propelled the car away, is that correct?

A. I do not.

Q. Do you know whether they drained the gasoline from the carburetor? A. I do not.

Q. Do you know whether they drained the gasoline from the carburetor? A. I don't know.

Q. Did you see them drain the gasoline from the carburetor or did you not? A. I did not see them do it.

Q. Do you know what an expander is, on a compression plant? A. No, sir.

Mr. Swacker: That is all.

Mr. Payne: That is all.

The Court: Stand aside.

(Witness dismissed)

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Mr. Payne: Call Mr. Dykeman.

(Whereupon, court took a recess for a few minutes.)

(Whereupon, court convened pursuant to recess taken, the same parties appearing as heretofore, the jury in the box, and the following proceedings were had, to-wit:)

Whereupon, R. E. DOWNING, a witness called for and on behalf of the Government, having been first duly sworn, under oath, according to law, took the witness stand and testified as follows, to-wit:

*Direct Examination by Mr. Payne.*

Q. State your name and where you live.

A. R. E. Downing, 232 Santa Fe Avenue, Tulsa, Oklahoma.

Q. What is your business?

A. Casinghead gasoline business.

Q. How long have you been in that business, Mr. Downing? A. Eight years in Oklahoma.

Q. How long altogether? A. Ten years.

Q. What is the material, what product do you produce out there?

Mr. Swacker: I object; incompetent, irrelevant and

immaterial; no showing here that there is any connection with this witness and the transactions involved here.

The Court: Now, he asked how long he had been in the refinery business.

Mr. Payne: In the casinghead gasoline business.

The Court: Whereabouts have you been in business?

A. Kiefer, Oklahoma.

Mr. Payne: What is the name of the plant?

A. Crosby & Gillespie.

Q. Have you ever used casinghead gasoline in an automobile?

Mr. Swacker: We object, as being irrelevant, incompetent and immaterial, and no showing what character of casinghead—

The Court: He can show—

Mr. Payne: Show first he used it, and then what is the gravity.

Q. What kind of a plant do you operate?

Mr. Swacker: We will be here from now until next June, the government can call 20 to 30 witnesses to state they did, and we can call fifty or a hundred witnesses to state they did not, it is a collateral issue, and—

The Court: You brought it on yourself—

Mr. Swacker: Of this particular material—

The Court: Not of the material shipped, I permitted you to go and show by a witness that they tested a material and it was the character of the material of the Kiefer plant. That is the way I let the evidence in. They did not know of their own knowledge that it was the materials of the Kiefer plant, but they tested it as experts, and know the character of the material at Kiefer, and I permitted them to testify it was the same material.

Mr. Swacker: We connected it up by proving by the witnesses who furnished it to them.

The Court: Yoy showed, though, it was subsequent to this date.

Mr. Swacker: We have also shown and it is undisputed that one plant will continue to produce the same character of material at a later date that it produced at a previous date, but it is a wholly different proposition.

The Court: I ruled on that; I will let them see what this is. You are manager of the Crosbie and Gillespie

plant. How long have you been manager of it? Let's get the predicate.

A. Seven years, ever since it was built.

Q. What kind of a plant is it? A. Compression.

The Court: Are you acquainted with the Gypsy plant there?

A. Yes, sir.

The Court: What difference, if any, is there in the make-up of the Crosby & Gillespie plant and the Gypsy plant at Kiefer?

A. Well, now, I couldn't say, I am not acquainted in that way that I can say. I have never been through the Gypsy plant.

The Court: Well, is your plant an absorption or compression plant?

A. Compression.

The Court: Go ahead.

Q. Are there expanders in your plant? A. Yes, sir.

Q. State, Mr. Downing, whether you have used the casing-head gasoline in an automobile?

Mr. Swacker: To which we object as incompetent.

The Court: From that plant. From that plant, from that Crosby & Gillespie plant, which is a compression plant? What does it compress?

A. Gas.

The Court: Casinghead gas?

A. Yes, sir.

The Court: And by compression, converts it into what is known as casinghead gasoline?

A. Yes, sir.

The Court: You use the expansion method?

A. Yes, sir, expansion for cooling.

The Court: This character of casinghead gasoline that you say you used in cars, where did you get it from?

Mr. Swacker: He hasn't said he used it yet. They asked him. You asked a question in which you implied that he said he had used it. He hasn't answered the question.

The Court: I think the record shows that. Did you use it in a car?

A. Yes, sir.

Mr. Swacker: To which we object.

The Court: I want to see the condition.

Mr. Swacker: Yes, but we want our exception.

The Court: I will give you a chance to make your objection and consider it made in time.

The Court: Go ahead, answer the question, you know how to lay the predicate.

Mr. Payne: That is what I have been trying to do.

Q. Did you use the gasoline from that plant?

The Court: I insist that is not—where did you get the gasoline, you say you used in the car?

A. From the Crosby and Gillespie plant.

The Court: When?

A. Ever since I built the plant for six years.

The Court: Go ahead.

Mr. Payne: That is all.

The Court: You mean you made it a practice of using casinghead gasoline to operate your car for that six years?

A. Yes, sir, may have sometimes bought some other gasoline when I was not there.

The Court: Did you use anything else besides this casinghead gasoline to run your car?

A. Yes, sir.

Mr. Swacker: We ask this evidence be stricken out as being irrelevant, incompetent and immaterial and not being shown it is the same character of material at all and the conditions are not shown, surrounding the manufacture, surrounding the particular material used by the witness.

The Court: I will let the record show that they shipped this very stuff—who does the evidence show they shipped it to.

Mr. Payne: The Texas Company at Port Arthur, at their plant.

The Court: Do you know the specific gravity, the range of the specific gravity of this commodity you are talking about here, do you know the maximum and the minimum of it?

A. I do not.

The Court: The way I get it from you is that you have run that plant for the past six years, and that plant

is used exclusively for abstracting casinghead gasoline from the gas by the compression method?

A. Yes, sir.

The Court: You did expand it and make it a practice to use that commodity in running your car?

A. Yes, sir.

The Court: Very well, I will let it stand over your objection and give you an exception.

Mr. Swacker: Yes.

The Court: I merely asked these questions to get the——

Mr. Swacker: We object now, with the development, it is specifically shown here it is not the same material he stated in response to the court he didn't know what the gravity was.

The Court: I admit he shows that practice during the year, and it is for the jury to say what the weight is, to say that during that time it is the highest or lowest gravity. I don't know whether this evidence on this test are admissible until it is unfolded and I hear the arguments on both sides as to the law. I haven't made up my mind as to its evidentiary weight.

Mr. Swacker: Give me an exception.

The Court: Yes.

Mr. Swacker: No cross.

*By Mr. Payne.*

Q. By what name did you call the product you produced?

Mr. Swacker: I object.

Mr. Diggs: We object.

The Court: Yes, I don't think that is competent, I don't think you are entitled to this.

Mr. Payne: Alright, that is all.

(Witness dismissed)

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Mr. Payne: Call Mr. Green.

Whereupon CLARENCE O. GREEN, a witness called for and on behalf of the Government, in rebuttal took the witness stand, after having been first duly sworn, upon oath, according to law, and testified as follows:

*Direct Examination of Clarence O. Green by Mr. Payne.*

Q. State your full name, Mr. Green?

A. Clarence O. Green.

Q. What is your business, Mr. Green?

A. Conductor on the Frisco.

Q. Mr. Green, have you ever secured any of the products any of the liquid from the loading rack of the Gypsy Oil Company at Kiefer?

Mr. Swacker: We object, incompetent, irrelevant and immaterial. The witness hasn't even qualified to know what the material is.

The Court: I will enter them for the purpose to show where he got it. I will see what you are driving at.

A. Yes, sir.

Mr. Payne: When was that, Mr. Green?

A. Latter part of the summer of 1917, I haven't the date.

Q. Under what circumstances did you—

The Court: Now, is the loading rack at Kiefer?

Mr. Payne: At Kiefer.

The Court: Gypsy Oil Company's loading rack at Kiefer?

Mr. Payne: Yes, sir.

The Court: What do you mean by loading rack?

A. Where cars are loaded. It is a pipe rack where they place a number of cars to be loaded from the pipe where the commodity is piped from the tank or plant.

The Court: Now, that is the Kiefer plant?

A. Kiefer plant.

Q. What do you do with that fluid?

Mr. Swacker: To which we object as incompetent, irrelevant and immaterial, no showing what fluid it was.

The Court: I believe the evidence shows that they shipped that commodity to north and south points, and this covers the period.

Mr. Swacker: The evidence also shows they received another commodity at those loading racks, being the north-bound naphtha. There would be no telling about the heavy naphtha.

The Court: This here is a loading rack.

Mr. Swacker: Yes, sir. Isn't that also the same place where inbound cars are received?

A. I believe so, yes, sir.

The Court: Well, now, when you were—when they were receiving, would they be unloading at the same place, you load by pumping, how do you load, how are the cars loaded?

Mr. Swacker: Not shown whether the witness knows.

The Court: I am asking him.

A. I would not be competent to say as to that.

The Court: I think you had better lay the predicate, show about the pumping rack, and the conditions of it, before this evidence would be competent.

Mr. Payne: I believe the answer to the question of what he did with it would show what it was.

The Court: I don't think so.

Q. Do you know, Mr. Green—

The Court: You have evidently got witnesses here that know how the plant was governed, and prove how it was loaded, and whether—where it was put there, and things like that, the circumstances—

The Payne: It seems so evident the inbound shipments would be pumped away—

The Court: Well, if that is self-evident, it can be proved. At least an effort ought to be made to get the best evidence. There are very few things that are automatic in this world in court.

Mr. Payne: If the witness is excused, I will lay the foundation.

The Court: Stand aside. Just wait on the outside there.

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Mr. Payne: Call Mr. Millard.

Whereupon MR. MILLARD was called to the witness stand for further examination and testified as follows:

*Further Direct Examination by Mr. Payne.*

Q. You have previously testified in this case have you not, Mr. Millard? A. Yes, sir.

Q. Do you know the nature of the material that Conductor Green got from your loading rack at Kiefer?

A. Either the product that we shipped as unrefined naphtha or else naphtha.

Q. Do you know which it was? A. I could not say.

Q. When a car of naphtha came in, wouldn't that be unloaded and sent to the tank? A. Yes, sir.



Q. So if you——

The Court: What was usually in the unloading, the loading station there?

Mr. Diggs: The loading rack, your Honor.

A. Nothing in the loading rack except what was left in the line from the previous products being loaded or unloaded; may have been either; it depends on what was the last operation.

Q. When an inbound shipment was pumped in, would there be any stuff left in the pipe?

A. Small amount left there generally.

The Court: When the loading station was filled for loading outbound shipments, how was it left? Would it be usually full, or what quantity would be there?

A. Previous to a certain date, it was always left full, and the people were found stealing gasoline from there, and after that always empty.

The Court: After that you kept them empty so there—so it was not available for the people to get?

A. Yes, sir.

The Court: Now, when the inbound or the intake, was it, you say that in pumping it away you only left what?——

A. What we couldn't get at.

The Court: What you couldn't get at?

A. Yes, sir.

Mr. Payne: What would that be?

A. Impossible to say.

The Court: How much approximately?

A. Maybe a dozen barrels or a dozen gallons.

The Court: Wouldn't be over a dozen barrels?

A. No.

Mr. Payne: Now, Mr. Millard, will you describe that loading rack and the pumps and the faucets on the rack?

A. Four inch line, laying above the ground, and about every 30 feet a two inch gate valves.

Q. Is there a faucet in the end of the rack?

A. Gate valve at the end of the rack.

Q. What was the nature of the commodity in those pipes, outbound, going south, or inbound?

A. Whichever being used.

The Court: Well, now those gate *valuves*—how much

would have to be left there, what quantity would be available out of the gate valves?

A. I don't get the question.

The Court: Those valves—Well, now, don't they have to be a certain amount for a certain valve to take it?

A. No, sir.

The Court: Go ahead.

Q. How come Mr. Green to get this? A. He took it.

The Court: Did he take it with your knowledge?

A. No, sir.

The Court: How did you know, then, he got it?

A. Because I caught one of his men there one night in the act of stealing it, and when I went down to see him next morning about it, Mr. Green admitted he had been taking it himself.

Mr. Payne: Taking what?

A. The products out of the line.

The Court: What did you call it?

A. Called it casinghead gasoline.

The Court: You know now, as a matter of fact, what the product was you knew then whether they were taking the intake or the outgoing?

A. The man I caught had the outgoing gasoline in the can in the car. I had also caught other people stealing the same material.

The Court: He says he caught this man Green's man.

Mr. Payne: Is that a sufficient foundation?

The Court: What was that man's name you caught?

A. Griffin, I believe.

The Court: If he knows the kind of material Griffin got, you have it identified.

Q. Did Green get the same kind of material as Griffin?

A. I believe he did.

Mr. Payne: That is all. Recall Mr. Green.

Mr. Swacker: Just a minute.

*Cross Examination by Mr. Swacker.*

Q. There is shipped outbound from Kiefer a material called drip, is there not? A. Yes, sir.

Q. And how is that drip distinguished from the ordinary run of unrefined naphtha? A. By being a lower gravity.

Q. And how else it is distinguished?

A. Generally a little off color.

Q. Now, you have no way of telling, no idea as to whether or not the materials stolen by these gentlemen consisted of drip or a higher grade of unrefined naphtha?

A. The man I caught with the product in their possession had the higher grade of unrefined naphtha, casinghead gasoline.

Q. In that one instance?

A. In both instances.

Q. Can you give the date when this happened?

A. I could not—as a matter of court record, it is a matter of court record in Sapulpa.

Q. A matter of court record in Sapulpa? A. Yes, sir.

Mr. Payne: In reference to Griffith?

A. In reference to the other parties, a man named Griffith—Green—

Q. Were these people prosecuted?

Mr. Payne: What people?

Mr. Swacker: That you were speaking of.

Mr. Payne: Their names.

Q. Either Griffith or Green prosecuted? A. No, sir.

Q. You are referring to somebody else as a matter of court record? A. Yes, sir.

Q. Do you know what Green or Griffith got other than on the one occasion, when you saw, what was in the drip, whether it was a higher grade of naphtha?

The Court: He said on two occasions.

Q. Then on two occasions?

A. Yes, sir, I caught Griffith and one party and another party and both had the unrefined naphtha in their container.

Q. You only caught Griffith once? A. Yes, sir.

Q. Did you catch Green at all? A. No, sir.

The Court: Who was the other party?

A. A party named Bon Danton.

Q. Who was he?

A. He was a merchant at Sapulpa.

Q. And you don't know whether on any of the occasions when they may have taken any of this material, whether they took the drip or whether they took a higher grade of gravity of a higher unrefined naphtha or an inbound shipment of naphtha?

A. The only occasion I caught them in absolute possession, I actually know.

Mr. Swacker: That is all—No, just one more question.

Q. You are no longer employed by the Gypsy Oil Company and have no relation with them? A. No, sir.

*Further Direct Examination by Mr. Payne.*

Q. Mr. Millard, is it a fact that the drips was kept separate from the other stuff? A. Yes, sir.

Q. And was the drip sent down through the pipe into the loading rack? A. Yes, sir.

Q. You kept it separate? A. Yes, sir.

Q. In the pipe?

A. Not in the pipe, but in the cars and tanks.

Q. That is, you batched it down the material, sent down the batch of material separately to the car. A. Yes, sir.

Mr. Payne: That is all.

(Witness dismissed)

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Mr. Payne: We would like to recall Mr. Green.

Whereupon, CLARENCE O. GREEN, the witness heretofore on the witness stand, was recalled for further examination by the government and testified as follows, to-wit:

*Direct Examination of Mr. Green by Mr. Payne.*

Q. Now, Mr. Green, what use did you make of the material that you secured from the Gypsy Oil Company rack at Keifer on the date you mentioned?

Mr. Swacker: I submit that it is incompetent, irrelevant and immaterial.

The Court: Do you know, Mr. Green.

A. Yes, sir.

The Court: Do you know the gasoline he got there?

A. No, sir.

The Court: Did he ever get any of you?

A. No, sir.

The Court: How many times did you get material there?

A. I think about three different times, I am sure, it was.

The Court: You know what it was you got?

A. Not technically, I used it as gasoline.

The Court: I don't think this witness is competent.

Mr. Payne: He said he used it as gasoline.

The Court: Can you use it as gasoline?

Mr. Payne: Yes.

The Court: Show that.

Mr. Payne: What was the color of the gasoline you got?

Mr. Swacker: I object to that witness, the witness is not qualified or competent to testify as to drips or the color of the higher grade naphtha or unrefined naphtha or anything else of color, it requires an expert to do that.

Mr. Payne: This drip is badly off color.

Mr. Swacker: It is a matter of very expert testimony to determine that and we know that.

The Court: I won't admit it under the present.

Mr. Payne: Can't we go into it roughly, whether it was a deep yellow, or water white?

The Court: If he knows, you will have to show he has had experience in colors of this kind in comparing them, you will have to qualify him.

Mr. Payne: Do you know Mr. Green, whether the gasoline you got was drip gasoline or not?

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial and it is merely another means of trying to get around——

The Court: If he knows, I will permit him.

A. No, I don't.

Q. Do you know whether it was the same material as was shipped outbound by the Gypsy Company?

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial, because it is shown that both were shipped.

The Court: If he knows whether it was the same material shipped to West Port Arthur or Port Arthur.

Mr. Digs: All of it was shipped there.

The Court: This shows this drip was not.

Mr. Digs: No, sir, I beg your honor's pardon, it shows it was shipped, but shipped in separate tanks.

The Court: I will exclude this evidence, I don't think the predicate is sufficiently laid.

Mr. Payne: That is all, Mr. Green.

(Witness dismissed)

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And thereupon, W. P. DYKEMA, produced for and examined as a witness for and on behalf of the United States in rebuttal testified as follows:

*Direct Examination by Mr. Payne.*

Q. Have you been sworn? A. I have.

Q. State to the court and jury your full name, Mr. Dykema? A. William P. Dykema.

Q. What is your business, Mr. Dykema?

A. Consulting petroleum engineer.

Q. A little louder please?

The Court: Consulting petroleum engineer. I am a little hard of hearing in one ear, but I am about to reach the conclusion I am not. Go ahead.

Q. State what education you have had, Mr. Dykema?

A. I received the degree of Bachelor of Science in the engineering mining in the Michigan College of Mines, at Holton, Michigan, in 1905.

Q. What was the last? A. In the year 1905.

Q. Have you made a specialty of petroleum products, Mr. Dykema? Or any part of petroleum products—before answering that question, state what your experience has been generally?

The Court: Has he stated what degree he has?

A. I did.

The Court: What was it?

A. Bachelor of Science, Engineering of Mines.

The Court: Of what?

A. Michigan College of Mines, Holton, Michigan.

The Court: Degree by any other institution?

A. No, sir.

Q. What position have you held?

A. From 1905 until 1909 I followed mining engineering, and then for two years I did consulting work in the oil fields of California. Surveying and general engineering.

The Court: What two years?

A. '11 and '12—1910 and 1911.

The Court: Go ahead now.

*By Mr. Payne.*

Q. What further work have you done, Mr. Dykema?

A. From that period until August, 1914, I was again engaged in mining.

The Court: What character of mining?

A. Silver and copper mining.

The Court: What years?

A. Until 1914.

The Court: Go ahead. What since then?

A. After that, for a year, I was with the City Engineer's Office of Los Angeles; in August, 1915, I was employed by the United States Bureau of Mines, and was with them until the first of March this year.

The Court: And what business are you in now?

A. I have left the Government to do consulting work.

The Court: He asked you to state, during those years, what brought you into contact with the petroleum business, and in what respects.

A. During the period I was in California in the general engineering business and surveying and mechanical engineering, the installation of storage stills and concrete, survey of pipe lines and that general character of work; since coming to the government, I specialized, except the first three or four months, with casinghead gasoline work, natural gas gasoline work.

Q. How long have you—while with the Bureau of Mines, what particular division were you in there, and where?

A. I was in the petroleum division located at San Francisco and a little less than three years, and for two years, full years, at Bartlesville, with the experiment station there, the last year if which—

The Court: You mean the petroleum experimental station?

A. Petroleum station.

Q. What was your position in that station, Mr. Dykema?

A. For the first year, the petroleum engineer, and the last year superintendent.

Q. Superintendent of the experimental station of petroleum? A. The petroleum division.

Q. Of the Bureau of Mines at Bartlesville, Oklahoma?

A. Yes, sir.

Q. Have you made any special study of the subject of casinghead gasoline?

A. That has taken up practically all of my time since I have been with the government, except the administrative work necessary at the station.

Q. That is since 1915? A. Since 1915.

Q. Do you go or did you go to the various casinghead



gasoline fields and make experiments and examinations in those fields? A. Yes, sir, I did.

Q. What fields, Mr. Dykema?

A. The fields in Pennsylvania, West Virginia, California, Oklahoma and Louisiana.

Q. Were they all the casinghead gasoline fields in the country or are they the principal ones?

A. They are the principal ones.

Q. Mr. Dykema, what publications are you the author of?

A. I wrote bulletin 151 for the petroleum division bulletin 176, with a co-author, technical paper 232, another co-author, another paper which is not printed. It has no number.

Q. State the subjects or titles of those technical papers.

A. Technical bulletin 155 deals with compression and refrigeration of natural gas or extraction of gasoline.

Q. Go ahead.

A. 176 deals with absorption methods of extracting gasoline from natural gas, and paper 232 deals primarily with the extraction of gasoline from the residue gas from compression plants by the absorption process.

Q. Was there one more?

A. The later paper deals with latent heats of gases as applied to the absorption process.

Q. By whom were those publications published?

A. They were published by the government.

Q. By the government, the Bureau of Mines, Petroleum Division of the Department of the Interior, is that correct?

A. Yes, sir.

Q. And have those works been given wide circulation?

A. Of my own knowledge, I couldn't state. I have run across them in various places and I am informed five thousand copies have been distributed and the two bulletins are entirely exhausted; how many more may have been ordered by the Superintendent of Documents, I don't know.

Mr. Payne: Mr. Dykema, did you, in connection with a number of the Bureau of Explosive inspectors, and others, make a trip to Jenks night before last?

A. I did.

Q. Will you—

The Court: Do you know this man Moss who testified here you saw him—?

A. I saw him, sir.

The Court: Will you state what you want to do, Mr. Payne?

Mr. Payne: What occurred at Jenks?

Mr. Swacker: To which we object as incompetent, irrelevant and immaterial.

The Court: Well, if you get what place you are at, I will admit it. Jenks is a very indefinite proposition.

Q. State what occurred in the plant of the Brady, Swanson & Calley people.

The Court: If anything did occur.

Mr. Swacker: To which we object, incompetent, irrelevant and immaterial, having nothing to do with this defendant or the Gypsy Oil Company.

The Court: Overrule the objection.

Mr. Swacker: We except.

A. We went to the plant——

The Court: Is that the plant where Mr. Moss was?

A. Yes, sir.

The Court: Go ahead.

A. We drained our gasoline tank thoroughly.

The Court: What do you mean by thoroughly?

A. We drained the tank which connected, of all, as far as the carburetor, and as far as we could determine, there was no gasoline left.

The Court: Did you drain the reserve tank?

A. I don't know if there was a reserve tank on the car or not.

The Court: Did you look to see, did you clean the carburetor and clean that?

A. The carburetor drains back to the tank automatically if you open the bottom of the tank.

The Court: Did you examine to see?

A. We examined the tank and the gasoline did come out of the hole in the bottom of it.

Mr. Swacker: May I cross examine him on that?

The Court: Yes.

*By Mr. Swacker.*

Q. You say you understand; did you examine to see whether it was in fact drained or look at the carburetor at all?

A. We did not.

*By Mr. Payne.*

Q. To the best of your knowledge and belief, was the car entirely drained of the gasoline that was in it?

Mr. Swacker: I object, being irrelevant, incompetent and immaterial.

The Court: Yes, I sustain the objection.

Q. Go ahead and state what occurred.

Mr. Swacker: I object, as being irrelevant, incompetent and immaterial.

The Court: You will have to show there was no gasoline in the car or the carburetor was cleaned, before I will admit the evidence.

Mr. Payne: We can show even if there had been any in the car left, it would have been used up very quickly.

The Court: You must do that and lay the predicate before I admit the evidence.

Q. Mr. Dykema——

Mr. Payne: They presume something——

The Court: You can lay the hypothetical question, lay the predicate for the hypothetical question, prove your predicate. I have ruled and you must follow what the court says, and we will get through.

Q. State whether or not—what kind of a car was it?

A. It was a Packard car.

Q. State whether the running of a Packard car from Jenks to Tulsa would use up all of the gasoline which might have remained in the car had there been a reserve tank, and had there been any gasoline left in the carburetor?

Mr. Swacker: I object to that as incompetent.

The Court: I am going to let them prove this, but will state now, I don't think the weight of this evidence amounts to much.

Mr. Swacker: Your honor observed the witness says he don't know how much the reserve tank might contain.

The Court: If you are going to make a test, you must take all manner of precaution to make the test.

Q. State whether or not, in your opinion, that would use up all the gasoline. A. It would.

Mr. Swacker: We have an exception.

The Court: I will let the circumstance go to the jury.

Q. State what kind of gasoline was put into that car after it was drained of gasoline that was already in it.

Mr. Swacker: I object to that question, particularly

as to the form, because it is already testified by the witness that he don't know whether it was completely drained.

The Court: That is for the jury. What the attorney says don't make evidence. The jury understands what was done.

The Witness: Repeat the question, please.

Q. As to what kind of gasoline was put in the car after it was drained?

A. The product of the compression of natural gas.

Q. What was the gravity of it? A. It was 85 gravity.

Q. 85 gravity. Did you take the gravity of it at the plant?

A. I did.

Q. What was the vapor tension of that gasoline?

A. The vapor tension, as we determined it, was seventeen and one-half pounds.

Q. Seventeen and one-half pounds?

Mr. Swacker: I don't want to be insistent, but may it be considered that we have an objection to each question and answer, and the court overrules the objection and we save an exception.

Q. After you filled the car with this 85 gravity gasoline—did it start the motor?

A. It did start the motor repeatedly.

Q. Was there any trouble in starting the motor?

A. There was none.

Q. State how far the car ran on that gasoline?

A. It ran—

Q. Well, where did it run to?

A. Ran back to Tulsa, ten miles, I understand it is about twelve miles.

Q. Did the car stall at all on the way back? A. No, sir.

Q. Was there any trouble in the running of the car?

A. None that I could determine.

Q. Was the road hilly or level? A. Quite hilly.

Q. What was the condition of the road near the Brady, Swanson & Calley plant?

A. The road near the plant there was new and very sandy and rutted deeply.

Q. About what speed did the car make on the way back?

A. We made as high as 35 miles an hour.

Q. Was there any adjustment made on the carburetor? on the car?

A. None that couldn't be made on the dash.

Q. Who drove the car, Mr. Dykema?

A. I do not remember the driver's name, I believe Donnelly.

Q. Was it a hired car? A. Yes, sir.

Q. Where was it hired?

A. At a stand across from the Tulsa hotel.

Q. Had you ever seen the car, or the driver, before?

A. Not to the best of my knowledge.

Q. Had you ever been to the plant of Brady, Swanson & Kelly before? A. No, sir, had not.

Q. Had you ever met Mr. Moss before?

A. No, sir.

Q. What kind of gasoline did you ask him to give you?

A. Casinghead gasoline.

Q. Raw casinghead? A. Raw casinghead.

The Court: I understand you object to this?

Mr. Swacker: I object.

The Court: Very well. I exclude that, as to what he said to him, as hearsay.

Q. Mr. Dykema, will you describe what occurred on the test of last night?

A. Under the direction of the court, three representatives on each side in this case went to determine—

The Court: No, you just go and state, and tell what you did out there. I strike out all this preliminary reference. You state you went out to the plant, and then state what you did.

A. We drove out to the Gypsy plant near Jenks, in a Pierce Arrow car, being unable to obtain the services of a Packard car.

Mr. Swacker: I object, as being irrelevant, incompetent and immaterial, as to being unable to obtain a Packard car.

The Court: Yes, that is stricken from the record. The Pierce Arrow car is a standard car?

A. Yes, sir.

The Court: It is one in general use in the automobile world?

A. Yes, sir.

The Court: Go ahead.

A. We started to make a blend which it was agreed by both sides would be somewhere as nearly as practicable, as could be made, to the material which had been shipped from Jenks, before the crude oil blend?

The Court: Where was that?

A. Jenks.

Mr. Swacker: No blending at Jenks.

A. Before the crude oil blend.

Mr. Swacker: I understand you proceeded to make a mixture of natural raw casinghead?

A. We took the raw casinghead from the accumulator, but we asked the separator to blend it, to make for us as near as possible the same material which they had shipped before blending with crude oil was adopted.

Mr. Swacker: Not blended at the time?

A. I am speaking of the material we got—We filled a fifty-five gallon drum with this casinghead from the accumulators tank and with the assistance of a steam hose proceeded to blend it or rather to weather it. After heating it for about an hour the vapor tension and gravity test was made and it was agreed that it was weathered to a point which was as near as could be made to the gasoline which had been shipped from that plant. Each of the cars, the Packard in charge of Mr. Burrell and the Pierce Arrow were then drained by opening the bottom plugs of the tanks; both sides being agreed that it was properly *agreed* and would make a fair test. Then put five gallons of this weathered gasoline in each car. I rode in the Pierce car which started off without any difficulty at all and stalled at a point about seven miles beyond Jenks toward Kiefer. After relieving the pressure which was built up in the tanks and cooling the engine somewhat undoubtedly, we started on again and went to a point within 100 yards of the plant and by relieving the pressure again got the engine in such shape that it drove in.

Q. Drove into Kiefer?

A. Into the Gypsy plant about a mile out of Kiefer. I believe.

Mr. Payne: Was the *carburetor* on that car? Was it adjusted.

A. No change had been made whatsoever at the Jenks plant, between the times we tried the compression gasoline and the time we put the weathered product into the tanks.

Q. Mr. Dykema, in your opinion, would the car have run steadily on that gasoline, had the carburetor been adjusted?

A. It would.

Q. Go ahead and tell what occurred afterwards?

A. In the gasoline plant, the employees agreed to make for us as near as practicable—

The Court: Now is he talking about—which car are you talking about?

Mr. Swacker: The Pierce.

Mr. Payne: The Pierce Arrow.

The Court: Did or did not adjust the carburetor?

Mr. Payne: Did not.

The Court: Why didn't you adjust it?

A. Didn't think there was any particular use of adjusting the carburetor, we were practically confident the car would run on that gasoline.

Mr. Payne: Without that adjustment?

A. Yes, I have learned since that the radiator was entirely closed.

The Court: Why didn't you look to see?

Mr. Swacker: Wait a minute, we object to that and move that that answer be stricken, what he has since learned.

By the Court: Yes.

Mr. Payne: State what occurred at the Kiefer plant, you started to tell that.

A. We—rather the employes at the plant made a blend of the material which was coming from the compression process with naphtha blending about 30 per cent naphtha and 70 per cent gasoline mixture and this was then weathered down with steam the same manner as we weathered the gasoline at Jenks until it reached a vapor pressure which was similar to that for shipping. It was about nine and three-tenths and a gravity of about seventy-five *Bohme*. We then agreed that the cars were satisfactorily drained and satisfactory to both representatives.

Q. The other side agreed that the drain was satisfactory?

A. Satisfactory on both cars; perfectly satisfactory, we charged into the car into which I rode ten gallons approximately. We had no fine measuring apparatus, drove into Tulsa.

Q. In the car? A. Yes, sir.

Q. Did the car stop enroute?

A. We didn't make a single stop.

Q. Did you have any trouble with the engine or any other trouble whatsoever? A. No trouble whatsoever.

Q. State what time you left Kiefer and what time you arrived at Tulsa?

A. We left the Gypsy plant near Kiefer at 12:20 and arrived in Tulsa at 1:03.

Q. About how far is that? A. About 19 or 20 miles.

Q. About what speed did you make in the car, state the maximum speed you made? A. Thirty-five miles an hour.

Q. Mr. Dykema, state in your opinion whether a material



even lighter than the material you used last night would run an automobile? A. It would.

Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

The Court: What was the question?

(Question read.)

By the Court: Material of what kind?

Mr. Payne: Of the kind that he used in the Pierce Arrow car last night.

The Court: I believe I will permit that. Their experts have testified as to what it wouldn't do and so on. The converse is true?

A. It would.

Q. How light would the material have to get before it would fail to run a car?

The Court: What material are you talking about?

Mr. Payne: The same material, gasoline.

The Court: The material that you had in that car?

Mr. Payne: Yes.

The Court: The commodity you had in that car?

Mr. Payne: The commodity you had in that car?

Mr. Swacker: I object as being irrelevant, incompetent, and immaterial, unless the proper foundation is made showing the witness has tried and demonstrated and found what point materials will not run the car.

The Court: He testified he is an expert and has had experience in casinghead gas and things like that, that is prima facie evidence, which would entitle him as an expert to testify, I will permit you to cross examine him, if you desire.

Mr. Swacker: I except.

The Court: I think the authorities hold the court determines whether a man is an expert.

Mr. Swacker: Yes, sir, but the question pre-supposes the knowledge which one could only have by ascertaining in a profession and it is not ascertained whether he attained that knowledge in a profession.

The Court: I will permit him to testify.

Q. Is as to whether material, even lighter than the material you used last night would run an automobile——

The Court: An ordinary automobile?

Q. An ordinary automobile, I mean, ordinary automobile and of the point of likeness—

The Court: Not a Ford—but I don't say that out of derision of a Ford—but a Buick or Dodge or Pierce Arrow.

Mr. Chambers: More Fords in use than any other car and probably use more gasoline than any other car.

The Court: I believe they testified yesterday, most anything would run a Ford.

Mr. Chambers: It makes it of commercial value then—

The Court: Well, when you determine the name, things like that and it is offered for the purpose that I think it should be conformed to the name of those that you have mentioned, take at least an average grade to determine it, I will confine it to Buicks, Dodges, and Pierce Arrows or Chandlers, cars of that character.

Q. Yes, any other standard than a Ford?

A. I believe any liquid made from natural gas by compression will run an automobile.

The Court: You mean of whatsoever gravity?

A. Yes, sir.

The Court: Why do you make that statement? On what basis do you make that statement?

A. I have ridden in cars using 105 gravity gasoline made by compression, a Dodge car that was, and experiments made and the data published concerning liquefied petroleum gas which was used, and the naphtha was most satisfactory, and I can see no reason why the lightest product, methane, would not be a good motor fuel.

*By Mr. Payne.*

Q. State in your opinion, whether the materials that you used in the automobile last night was gasoline or unrefined naphtha? A. It was gasoline.

Mr. Diggs: We object to that, and ask the answer be stricken, as not proper rebuttal. This, I don't believe, is proper rebuttal.

The Court: That is within the discretion of the court.

Mr. Diggs: Yes, sir. That is the way I understand that.

The Court: I will let that in. Let's proceed now.

*By Mr. Payne.*

Q. Mr. Dykema, will you state whether the compression of casinghead gas into gasoline is a refining process?

Mr. Swacker: I object, incompetent, irrelevant, and immaterial, the witness not having been qualified as a refiner.

The Court: I think he——

Mr. Diggs: Not proper rebuttal.

The Court: He testified he has experience as being the head of the United States Government Petroleum experimental station.

Mr. Swacker: He said that he was in the casinghead field. That doesn't import knowledge and experience—expert knowledge as to refining.

The Court: Well, this involves, this question leads, I take it, to the process of refining involved in the reduction of natural gas.

Mr. Diggs: I object to that if the court please, on the ground it is not proper rebuttal.

The Court: I will assume the discretion of the court and permit that, and I will let him answer the question.

Mr. Diggs: If I understand the court is going to permit this, I will not continue to object.

A. I would not consider it a process of refining.

The Court: Don't consider what as refining?

A. The extraction of gasoline from a natural gas by compression, as I understand.

The Court: You don't consider that a process of refining?

A. No, sir.

The Court: What do you call that?

A. Process of manufacture. You might call it a separation.

The Court: Manufacture of what?

A. Gasoline, casinghead gasoline or natural gas gasoline, we use that term, also.

Q. State whether the casinghead gasoline produced in that manner is a refined or unrefined product?

Mr. Swacker: Object to that on the same ground. He has not shown his qualification as a refiner.

The Court: I will permit him to answer the question.

A. A refined product.

The Court: Why do you say it is a refined product?

A. It needs no purification and it is used directly as it is made, without a change, in the majority of instances and great bulk.

The Court: When would it become refined?

A. It became refined when it leaves the oil bearing strata which is similar to a distillation.

The Court: You mean the oil-bearing strata in the earth?

A. Yes, sir.

The Court: And that is similar to a natural distillation by a natural geological process. is that what you mean?

A. No, sir, the pressure is relieved on the oil and the gas comes up from the oil, and from the oil bearing strata and carries gasoline with it, carries the lighter hydro carbons which come from the oil, if a vacuum was put on it, a greater amount of this distillant will come up in the oil.

The Court: What would you call that process by which in bringing the natural gas to the earth and the same time with oil and at the same time separate it, what would you call that process?

A. It is merely the separation.

The Court: Then what refines it? You say now it is refined, before it is compressed, before it is brought, separated from the gas by compression; you say it is refined. How is it refined and what refines it? What is the process of refining t?

A. The process of evaporation.

The Court: Evaporation where?

A. In the earth.

The Court: Take gold, it is not pure, you talk about refining gold; now, naturally, that product—Go ahead, take the witness.

*By Mr. Payne.*

Q. State whether the product is one that requires any refining after it is in a liquid state. A. It does not.

The Court: Now, in order to get the issue into this, you got to show it is refined, it seems to me, before it—at least partially refined, before it complies—this word naphtha as we know it—because if it had not been properly refined, it would be unrefined, if it hadn't gone through

a refining process; you have got to subject this to the rule of reason.

Mr. Chambers: It might be a commodity that wouldn't have to be refined.

The Court: Can any of the—

Mr. Chambers: If it has nothing in it, there would be no necessity for it to be refined.

The Court: If there is no necessity to be refined—don't the word "un" mean without?

Mr. Payne: I will bring that out by the witness.

Q. State whether the word unrefined, as used in the petroleum business, refers to the state in which a particular oil is, or whether it refers to the condition of the oil.

Mr. Swacker: I object, incompetent, irrelevant and immaterial unless it be shown that there is a difference, some difference in the definition of the ordinary word than that in ordinary use, incident to the refining business, and that he is not qualified as a refiner.

Mr. Diggs: I further object on the ground that it is not proper rebuttal.

The Court: Very well, go ahead. I think that is within the discretion of the court. I will let it go in and you may have your objection to this evidence on the ground that it is not proper rebuttal.

Mr. Diggs: I was just going to suggest to the court that while it has been his discretion they have been allowed to go so far as to open up new avenues hereafter.

The Court: I will determine that. I sustain this objection. Of course, you can prove that for a specific industry, that a word has a technical or professional meaning for that industry, and of general use, that it is different from its ordinary use. The presumption is against that until it is established. I think that is the rule.

Q. Is the word unrefined, as used in the petroleum industry a word to indicate that some refining is necessary?

Mr. Swacker: Now, that is where my objection further goes, that he is not qualified as a refiner. It would certainly take some one in the refining business to give special definitions of words.

The Court: That is a matter not given as an expert, but that is a matter any witness can testify, as to how it is used.

Mr. Diggs: I object further, on the ground the question is leading and suggesting the answer to the witness.

The Court: I will overrule you on that.

Mr. Diggs: Exception.

Mr. Payne: State the answer.

The Court: Do you know, and how do you know, if the word unrefined in the petroleum industry has any special meaning, other than the ordinary meaning of the term? I will find out how he knows and whether he is qualified. I will know his reason for it.

A. Will you state the question again?

(Question read.)

A. I believe not.

Mr. Swacker: I object.

The Court: As an expert, I will let him testify as to the process, how it comes from the ground and if it is refined in the earth by nature, process you described that process and I can see how through geological agencies and by nature's process of refining how it is made, but that is as far as I will let him go and that is on account of his technical knowledge of the particular subject, but his knowledge of the use of the terms of words, a man only gets that by contact in trade, in business and elbowing up with the world that deals with him, that is the way I understand the rule.

Q. Let's start right at the beginning and describe what process the gas goes through from the time it begins to come up to the earth, until a liquid form of gasoline in the plant, state what natural process of refining it goes through?

Mr. Swacker: I don't want to be captious, but the question should embrace, or answer should qualify, this is merely a theory, he can not get down into the earth.

The Court: A scientific theory, that is what that means.

Q. Go ahead.

The Court: The jury ultimately has to determine all these facts and they have the evidence of the specific facts and they have the benefit of reasoning of the experts but they at last have to exercise their reason to determine the facts.

A. From the gas that is used in a casinghead plant, gasoline—casinghead gasoline plant, that comes from the earth. it comes out on account of the natural pressure, commonly

called rock pressure and with the assistance of a vacuum pump which relieves the pressure on the surface and allows the gas to produce in a vacuum.

Q. Now, state whether or not that process is the same as the distillation of the crude oil in a still?

Mr. Swacker: I object as being irrelevant, incompetent and immaterial, on the ground he is not qualified as a refiner.

The Court: If he has had experience is it in his business in the application of the distillation process, to answer it I will let him answer it. He knows whether he knows that is from practical experience as an expert, as an expert have you seen crude oil distilled in refineries?

A. Yes, sir.

The Court: Very well, I'll let him answer. Go ahead.

Mr. Swacker: We object to what the witness states because that is a conclusion.

The Court: I think that is a comparative fact, I believe the court—

Mr. Swacker: I don't object—

The Court: Is it a—state the similarity of this and if there is any difference state what the difference is.

Mr. Swacker: I am perfectly willing to that, but not that this witness say that is the same.

The Court: You can state whether or not it is similar and if there is any deviation in the similarity state what that is.

Mr. Payne: Go ahead.

Mr. Swacker: I think the proper way should be to prove the process, and then it is obviously—

The Court: That is the practical way. The process—this man's process and how they both compare, how they are similar, and if any deviation, and that would be the better way, I think; obviously it would.

Mr. Payne: Take up the two processes, the making in the earth and the distillation of the product, and at a crude still?

A. In a crude still heat is applied to oil and as the temperature rises, the various liquids come off in the order of the boiling point.

Q. Of their lightness?

A. As they reach the boiling point. In the earth, the oil is under a pressure which raises the boiling point of these



various liquids, and after they are released and allowed to run in the oil—that is, the oil is allowed to run in a pipe line or tank, practically the same thing happens as the various boiling points are reached, they are distilled and come out of the crude oil, and this is the product that is collected in a compression plant.

Q. State whether, in your opinion, the evaporation or condensation, the vaporizing from the crude still when heat is applied, this crude oil will form a vapor that is similar to the vapors that come up out of a well? A. They are very similar.

Q. When the two vapors are condensed, is the liquid obtained from the two vapors about the same? A. Yes.

Q. Why?

A. In a gasoline plant, these vapors, in order to collect the vapors, the gases are compressed to bring them back to their natural state of liquid and cooled. In the still the gases are cooled first and part of them taken off, those whose boiling points are below the temperature of the coils are condensed to a large extent and then the bulk of the gas is usually treated further for the extraction of these condensable vapors.

Q. So that in your opinion is the casinghead gasoline a gasoline that has been refined in a similar manner to the gasoline produced by the distillation of the crude oil in a still?

Mr. Swacker: Now, he hasn't stated it was refined at all. He has simply stated the process.

The Court: Now, what do you say as to that process, natural process that you have defined, as to whether that amounts to a refining process or not? A. It does.

Mr. Swacker: We are not disputing that it amounts to or is analogous to a refining process, but the question implies that that made it completely refined. We say it only makes a partial refining.

The Court: I will let him, as an expert, testify whether or not that is refining for petroleum purposes, that is a matter of reason, just as you have your experts. They apply these facts to reason, and they state. Now, this witness can say that, but the jury apply the reasons finally to the facts, where there is a dispute, and they finally determine it.

Mr. Swacker: I don't think perhaps your honor got the ground of the objection. The objection is on the ground that the question implies that the witness had said that the material was already refined.

The Court: What do you say as to whether when the material has gone through the process, that when you

separate by compression, as to whether or not it is a finished, refined commodity?

A. My opinion is, that it is a refined product.

The Court: Finished through a process of refining, as a rule, now?

A. Yes, sir.

The Court: When you testify, you are testifying as to the general rule, because there is nearly always exceptions to all general rules. Go ahead.

Q. Mr. Dykema, will you state from what uses to which gasoline is put, besides the uses, the use in an automobile?

A. Gasoline is used for heating purposes, for lighting purposes, for cleaning purposes, in the—

Q. When you say for heating purposes, do you refer particularly to gasoline stoves?

A. Yes, sir, practically that. It is used in different ways for heating purposes, it is used for heating in assay's office, that is to make the melts.

Q. Did you mention that it is used as gas, gas for gas machine gasoline?

A. That is the method of use for both heating and lighting.

Q. Now, state the gravity, that is, of the gasoline that is generally used for some of these purposes?

A. These machines, this gas machine, gasoline is generally used considered a product of between 76 and 84 gravity. It might be even narrowed more, a little, from 80 to 84 gravity, naphtha, you don't want me to speak of naphtha?

Q. No, do not answer about it. How about the gasoline stoves?

A. Gasoline stoves operate on gasoline of 58 to 60.

Q. 58 to 68? A. And 68 at times.

Q. 68? A. 68 gravity.

Q. Would the fact that gasoline made by compression of the natural gas be too high a gravity for ordinary commercial use, would that fact make it something other than gasoline?

Mr. Swacker: I object to that as it would be a conclusion of the witness all together, I don't care whether he wants to say what he would call it.

The Court: Read the question.

Q. Would that fact, would the fact that gasoline made by compression of natural gas be too high a gravity for ordinary commercial use, would that fact make it something other than gasoline?

Mr. Swacker: That is asking, would gasoline be gasoline.

The Court: I permitted you to ask the witness whether gasoline was gasoline. Would that be gasoline?

A. Yes, sir.

Mr. Diggs: I have no objection if he asks him if it is in his opinion.

The Court: In your opinion as an expert.

A. Yes, sir.

Q. In your opinion, is it gasoline regardless of the gravity?

A. If made in a compression product, a compression plant.

Q. Yes, sir? A. It is.

Q. Is it not a fact that the product from the compression of natural gas is what is universally known as gasoline?

Mr. Swacker: I object to this as involving—he supposes that the witness has universal knowledge.

Mr. Payne: He has.

The Court: I will let him answer the question, whether it is commonly known, not universally known.

Mr. Swacker: I think he should be limited in it—

*By Mr. Payne.*

Q. Is it commonly known as gasoline?

The Court. You can bring out what he means by commonly known.

Mr. Swacker: Exception, please.

Q. Is that liquid commonly known as gasoline? A. It is.

Q. In the trade? A. Yes, sir.

Q. In the scientific world? A. Yes, sir.

Q. Have you ever heard it called unrefined naphtha prior to the beginning of this suit? A. I never have.

Q. Do you regard the name unrefined naphtha as an appropriate name for this product? A. I do not.

Q. Why not? A. It is misleading.

The Court: In what respect.

A. It is misleading in the respect that it would need further refining and further purification. ✕

Q. Is any further purification necessary?

A. It is not. I speak in the majority of cases. In our casinghead gasoline, for instance, there is lots of sulphur which must be refined out.

✕ Q. Is that true of the Oklahoma gas?

A. Generally that is not true of the Oklahoma gas.

The Court: Now, you covered the question did not

need further purification. Why do you say it does not need further refining?

A. It is fit for use as it is. It is marketable as it is.

The Court: What do you call the process, then, of blending?

A. I call it blending. It is mixing.

The Court: You mean to say, then, that that is not one of the arts of refining.

A. I would say so. There is no purification. It is never referred to as refining process. Most of them refer to it as blending and at times mixing.

The Court: You mean it is never referred to by scientific writers who are experts in that field?

A. Never; it takes in too much territory; but usually, and very generally, it is referred to as blending or mixing in the literature, and more generally still, by the operators.

The Court: Well, do the scientists say that it is not refining where it is discussed by them?

A. I don't remember of hearing a discussion on the point.

The Court: Well, now you say, then, it is ordinarily by the scientists, authors, referred to as blending and mixing?

A. Yes, sir.

The Court: And not as an art of refining. Now, do those who refine them, if you know, in the practical application in the erection of plants, how do they regard it?

A. I am not clear on the question.

The Court: Well, now you have——

A. You mean refineries or compression plants?

The Court: Well, compression plants, are, usually a company or a refinery, an adjunct to it?

A. No, sir.

The Court: You say they are not?

A. No, sir.

The Court: Where are compression plants usually located?

A. Located near the oil wells, near the gas wells.

The Court: You say a compression plant, as a rule, is not a part of the specifications for a refinery?

A. Compression plants are being used to treat, the still vapors in the refinery, but I don't believe the average refinery

in the country, or the majority, I will say, of the refineries in the country do use that process today. It is an advance step. It is a matter of great efficiency by reducing the loss in the refinery.

The Court: You mean that applied, is a process of conservation, when you apply the word efficiency, you mean this a process of more conservation and economy and not scientific, not a scientific process of refining, to make a designated commodity?

A. It is a matter of economy—I can explain that.

The Court: Well, it is twelve o'clock now. Court will take a recess until 1:30. The audience will keep their seats and the jurors will go out under the instructions of the court heretofore given you, and the admonitions heretofore stated. The jury will pass out and the audience will keep their seats.

(Whereupon, the jurors retired from the court room.)

Whereupon, court took a recess until 1:30 o'clock p. m. this afternoon.

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AFTERNOON SESSION.

April 21, 1920; 1:30 P. M.

Whereupon, court having met, pursuant to adjournment, and the jury having been called and all found to be present, and counsel for the plaintiff and counsel for the defendant announcing to the court they were ready to proceed with the further trial of this cause, the following, further proceedings were had, to-wit:

Mr. Payne: It just struck me that if the other side had the distillation tests ready that they could put their witnesses on and then we could put ours on.

The Court: Do you want to use this witness?  
(The witness, W. P. Dykema, is on the stand)

Mr. Swacker: Do you suggest we put on our defense as to distillation tests.

The Court: Both of them.

Mr. Swacker: We would be glad to put on our witnesses on the distillation tests.

The Court: Very well.

(Witness excused.)

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Mr. Payne: I will continue with this witness after this is all through.

Whereupon, Dr. J. B. GARNER, a witness heretofore on the witness stand was recalled for further direct examination by the defense and testified as follows, to-wit:

*Direct Examination of J. B. Garner by Mr. Swacker.*

Q. Dr. Garner, you testified previously did you?

A. Yes, sir.

Q. Did you accompany the party to the experiment last night with the material from Jenks and Kiefer?

A. Yes, sir, accompanied Mr. Dykema, Mr. Teague, Dr. Bacon, and Dr. Burrell.

Q. And have you made distillation tests of the material used for these tests? A. Yes, sir.

Q. Will you state the distillation tests, did you make it fractional? A. Yes, sir.

Q. To what fractions did you take it?

A. To 5 and 10 degrees temperature, intervals.

Q. Well, will you state the distillation tests you found upon the material used at Jenks?

A. Your honor, it will be necessary for me to refer to my notes in this connection.

The Court: Made at the time?

A. Yes, sir.

The Court: Very well.

A. Made at the time.

Q. Have you plotted them on a curve?

A. Yes, sir, I have.

Mr. Swacker: Perhaps that will enable a better presentation of them than merely stating the figures. Will you mark that please?

(Thereupon, the papers referred to by counsel was marked for identification, Defendant's Exhibit 149.)

A. Your honor, one was the Jenks product and the other the Kiefer product.

Q. I will show you a paper marked Defendant's Exhibit 149, and ask you if that shows the distillation curves of the materials taken from Jenks and Kiefer?

A. The curves shown on Defendant's Exhibit 149, labeled "Sample from Jenks," is the sample obtained from the Jenks gasoline plant of the Gypsy Oil Company.

Q. And the one marked—

A. The one marked sample from Kiefer was obtained from the Kiefer gasoline plant.

Mr. Swacker: I offer that in evidence.

The Court: Let the record show it is offered in evidence and is admitted and considered read.

Q. This shows the percentage of the material distilling at the temperature indicating the per cent of material being shown vertically at the left hand edge of the paper, and the temperature along the bottom, is that correct?

A. That is correct.

Q. And these are the same materials used in the test last night? A. Identical material.

Q. Mr. Garner, have you made many tests in your profession of materials of this character to ascertain by their curvatures whether or not they are gasoline or whether usable as a commercial gasoline? A. I have.

Q. How many such?

A. It would be difficult to state the exact number.

Q. Thousands or hundreds, or what?

A. I suppose under my direction—a hundred or more tests have been made.

Q. A hundred or more tests? A. Yes, sir.

Q. Have those distillation tests been coupled with performance tests, to ascertain whether or not they would operate?

A. In many of the cases, yes, sir.

Q. You say—

The Court: How many of that hundred?

A. I can't recall exactly.

Q. About ten?

A. Ten or more. I don't know whether 10, or 12, or 13, or 20.

*By Mr. Swacker.*

Q. Would there be some of the tests that it would be obvious from previous tests that the curve would indicate it would not be a practical material for gasoline?

A. Repeat the question.

Q. Would there be some of the tests that it would be obvious from the previous tests, that the curve would indicate that it would not be feasible material for ordinary use as gasoline?

Mr. Payne: We object.

The Court: On what ground?

Mr. Payne: On the ground, as I understand it, merely the distillation test here goes in.

Mr. Swacker: I think we have a right to show what the distillation tests would indicate.

The Court: I permit it for this reason, I have seri-



ous doubt as to whether or not you should not have introduced your expert evidence in chief. I resolve that doubt in your favor.

Mr. Swacker: Now, will you answer, Mr. Garner?

The Witness: Will you repeat the question?

Q. You said you had made at least one hundred distillation tests and coupled with those distillation tests in at least ten instances you made performance tests?

A. Yes, sir.

Q. Now, my question is—

The Court: The right question is, why didn't you make performance tests of all?

A. Your honor, I have made performance tests in all of them.

Q. Now, then, as the result of such experiment, can you say whether or not the curve indicated by the distillation test in this Exhibit 149 is a suitable article for commercial gasoline for ordinary purposes, under ordinary conditions?

A. In answering this question, it must be very clearly understood that there is a vague, indefinite region wherein it is difficult, almost absolutely impossible, to tell whether a thing would be a commercial gasoline or would not be, until the actual performance test had been made; but there are certain well defined regions *there are certain well defined regions* outside of this indefinite and vague regions which a person can state would in general not be a gasoline or would be a gasoline.

Q. Well, now, take that region—

The Court: I don't think that is the issue in this case, whether it is a commercial gasoline. The way I understand it is whether it is more appropriately called gasoline than unrefined naphtha.

Mr. Swacker: That is our own acceptance of it also.

The Court: And that is my present intention to so charge the jury, whether in all things, taking all in all and the view of nomenclature, is that the appropriate name for it or this the appropriate name?

Mr. Swacker: I will ask him this question direct.

Q. Will you say whether those curves indicate to you whether the name unrefined naphtha or the name gasoline—which name, unrefined naphtha or gasoline is more appropriately applicable to the material.

Mr. Payne: I object to that, the witness has already testified to that.

The Court: He already has testified to that, that is duplications. He testified to that, that is my recollection

when he was on the witness stand before. That is just rehashing the same evidence.

Mr. Swacker: He has the, as the result of this identical material—

The Court: I will permit you to ask him if he sees any reason why he should change his opinion from his former evidence.

Q. Will you answer that Dr. Garner?

The Court: Since you have made that test?

A. I see no reason whatever for changing my previous answer.

Q. You are still of the opinion it is unrefined naphtha?

A. Yes, it is not gasoline.

Mr. Swacker: That is all.

The Court: I want to ask him a question.

Mr. Swacker: Alright.

The Court: Now what is this product that is taken from the gas by compression, what is the general name that it is known by?

A. The general name is casinghead gasoline or casinghead gas.

The Court: Now, you say, either casinghead gas or casinghead gasoline, one or the other?

A. Yes, sir.

The Court: Now, if you go and take two parts of the casinghead gasoline or casinghead gas and one part of the crude naphtha, then which dominates, which is the major portion of that blended commodity, casinghead gasoline, or crude naphtha?

A. The one you would sell to the public?

The Court: No, I am talking about this commodity you have got there?

A. I would call that an unfinished product.

The Court: Which dominates, which is the major portion?

A. The casinghead gas.

The Court: The casinghead gas?

A. Yes, sir.

The Court: Why did you call the given, that—why did you call and give the name, carrying the naphtha name rather than the casinghead gasoline when it takes the majority portion of the other product?

A. I don't believe I understand the question.

Q. Assuming that the blended commodity has one part of the crude naphtha and two parts of the other, I believe that is about the proportion to show; then you put it together, why in the nomenclature do you carry the naphtha name rather than the casinghead gasoline name?

A. I don't know, sir.

Q. The reason for it?

A. It would be a blended material, but I don't know any one who could predict what that material would be until they had made certain tests of that material, and it might be a blend or it might be a mixture, and it might have perfect contiguous property and it might have intermediate or irregular property, and it could be blended gasoline or not gasoline or something else, depending upon the material originally mixed or originally blended together.

The Court: That is all. The reason I asked this was for the derivation. That was suggested to me. I don't intend to say that those names are right, only that is the process that occurred in my mind.

A. If I might be permitted, your honor, I could give you a concrete illustration of that.

The Court: Very well.

A. We obtained a sample of raw casinghead gasoline from the Jenks gasoline plant at the Gypsy Oil Company last night. It failed to comply either with the chemical or usable test of gasoline. Our car went dead on us. There was no adjustment which you could subject that car to which would make it go. We were in front of the gasoline plant of the Tidal Oil Company, somewhere between Jenks and Kiefer, and we had no motor fuel to get along with. We were out in the dark, and we suggested that some one go over to this gasoline plant, to see if we could get some naphtha. They had no naphtha, but they had some drips, which was a very heavy material, which I tested in this way. I put it on my hands and I couldn't get it to dry off at all, it was greasy, seemed to have some kerosene or some heavier stuff in it. We had four inches approximately of material in the reserve side of the tank of this Packard car. We put in very conservatively estimated amounting to a gallon and a half of this material called drip, and we shook the car up, and then the car would not budge. We then sent back for more material of the same kind to see if we could thin the stuff out and make a gasoline out of it, and we put another quantity of approximately a gallon and a half into this same tank, and still the car wouldn't budge. Now, that thing was a mixture, it had a lot of heavy ends in it, and it wasn't gasoline. It was an unfinished, unrefined product.

The Court: But why do you call this compression

commodity that comes from the gas, casinghead gasoline, why is the reason—there is always a reason for everything you name—it occurred to me the derivation, of a human name——

A. It is called casinghead, of course.

The Court: You trace back the derivation of the human name, and there is always a reason, a reason for everything you see. Now, what is the reason for calling that casinghead gasoline? What derivative is that from?

A. I can see a number of reasons, I don't know definitely how this name gasoline ever became associated, I know the derivation of the word gasoline, but I would assume, from my knowledge of the literature on the subject, a part of the name casinghead was given to this commodity because it was derived from the casinghead of an oil well, and would also assume, without any definite knowledge on the subject, because I find no definite statements anywhere, that it was called gasoline because it could be made into gasoline.

The Court: Proceed with the further examination of the witness.

*Further Direct Examination by Mr. Swacker.*

Q. Doctor, did you get a computation of the mileage of the material on these tests last night?

A. As far as I could get such information, yes, sir.

Q. What did it show?

Mr. Payne: I object, on the ground that the railroad tariff, in naming the rate on gasoline, unqualifiedly and unmodifiedly does not limit the gasoline rate to an ideal or economic gasoline; the tariff says gasoline.

The Court: I think that is it.

Mr. Swacker: We think that is a matter of argument, that we would like to argue at the proper time. For instance, you might just as well contend the rate on silver embraces quicksilver, and the rate on glass embraces the rate on isinglass; if it is a different thing, it certainly does not embrace a foreign thing. That is, a compound name.

The Court: What is the question?

Mr. Swacker: I am asking him what the mileage test was last night. It has nothing to do with what we are arguing.

The Court: I will let that go in.

A. Your honor, it would be necessary to refer to my notes.

The Court: Very well. If there is that for the ex-

perience about casinghead gasoline being used in cars, and how well it will work on this evidence will be of the same character and make it competent. I will let that in. I will adopt a rule on it. You may answer that.

A. A full five gallon- of gasoline, such as is contained in the source of contention in this case was put into the thoroughly drained tanks of the Packard car.

The Court: Now, you can answer that without going over all of that.

*By Mr. Swacker.*

Q. Can you telly in gallons per mile?

A. Approximately four miles per gallon.

Q. That is all.

The Court: A gallon four miles?

A. One gallon carries a car four miles, approximately.

*By Mr. Sawcker.*

Q. Now, can you say what a Packard car of the character in use, ordinarily makes with gasoline?

A. From eight to nine and a half or ten miles.

Q. That is all.

*Cross Examination by Mr. Payne.*

Q. Now, is it not a fact that the gasoline of the gravity from 80 to 90 is used in gas machines?

A. I have no knowledge of such a material.

Q. You never heard of that?

A. 80 to 90 material, no, sir.

Q. Now, on what ground do you say that a gasoline of this limit, the product, liquid, from casinghead gasoline plants that has a gravity from 80 to 90 is not gasoline?

A. Well, there are a number of elements that personally I consider are prerequisites to any approximate definition of gasoline, and I can answer your question best by stating that conception. I have never seen any of the gasoline you have described. I have never heard of it.

Q. Now, let me ask you this question: isn't there other uses for gasoline than in a motor car?

A. I presume there are many other uses.

Q. Now, all these other uses—gasoline of different gravities?

A. The gravities are no measure of quality of the material.

Q. Well, different volatilities, then?

A. Within certain ranges.

Q. Now, is it a fact that a fluid that won't satisfactorily, we will say, run a motor car, would that necessarily prove that it was not gasoline? A. It would, sir.

Q. On what theory? You admit that there are other uses for gasoline?

A. Not on the basis of a theory, on the basis of usage and economy.

Q. I will ask you to state the initial and end boiling points of those tests?

A. On the Jenks material, the initial boiling point was 77 degrees Fahrenheit. The dry point 326 degrees Fahrenheit. On the Kiefer material, the initial boiling point was 79 degrees Fahrenheit, and the dry point was 481 degrees Fahrenheit.

Q. Now, would you say that liquid will not run an automobile? A. It did not run an automobile.

Q. Did it not run the Pierce Arrow all the way from Kiefer into Tulsa?

A. I was not in the Pierce Arrow car and have no information.

Q. Was it in your sight?

A. No, sir, it was not in our sight.

The Court: If it does, what would you say?

A. I would say that it would not necessarily make it gasoline, for the reason a Pierce Arrow car is a very exclusive car, it is not a car that represents any very considerable portion of the great percentage of the cars, that is the first one, it is not a car in common usage.

Q. It is not?

A. It is not a car in common usage. It is used by people who are very wealthy. In the second place, it is a car that is nearly mechanically as correct as a car can be built. It has—

The Court: Suppose now, this would run a Ford?

A. I would say then, your honor, it would be gasoline.

Q. Now, is it a fact you can run a Ford on less desirable stuff than you can on most any other automobile?

A. It is not so.

Q. Was it not testified to here this morning?

A. I was not in court here this morning.

The Court: Yesterday morning.

Mr. Payne: That is all.

*Further Direct Examination by Mr. Swacker.*

Q. Have you known, doctor, material that was not gasoline at all, such as crude oil or kerosene, to be capable of running a car?

A. I have known some crude oil to run a car.

Q. Would you say actually run a car? A. Yes, sir.

Q. Did it run as well or better than this?

A. It run it as well as any gasoline I ever saw.

Q. Then the fact this is not--this might run a car does not make it gasoline?

A. Not necessarily; the usage always determines the use of the commodity.

Q. Now, this Pierce Arrow car is an extremely powerful car? A. Assumed to be.

Q. And what mileage ought that to have been capable of making last night, what speed?

A. I am unable to tell you.

Q. Say sixty or seventy miles per hour?

Mr. Payne: I object. He already stated he did not see the car.

Q. You don't know whether that car may have been especially adjusted so far as the carburetor is concerned expressly so it would be capable of handling this material?

Mr. Payne: I object.

The Court: If he did not see it, it is asking him a negative.

Mr. Swacker: It is the question asked him, a hypothetical question asked him what it would do.

The Court: I asked him about a Ford.

Mr. Swacker: You also asked him if the Ford would run, would it be gasoline.

The Court: He says no.

Mr. Swacker: Suppose it would run it, then would it be gasoline?

The Court: He didn't say that.

Mr. Swacker: Not necessarily, would have to know something about the car, I am showing one of the elements about the car.

The Court: I don't think that is competent.

Mr. Payne: Just one more question.

Q. Under your theory, crude oil is gasoline?

The Court: No, no, that is a matter of argument.

Mr. Swacker: That is a conclusion.



The Court: That is a matter of argument.

Mr. Payne: That is all.

Mr. Swacker: That is all.

(Witness excused.)

Whereupon, W. P. DYKEMA, a witness heretofore on the witness stand was recalled by the government for further direct examination and testified as follows, to-wit:

*Direct Examination of W. P. Dykema by Mr. Payne.*

Q. Have you ever visited the plant of the Gypsy Oil Company at Kiefer, Mr. Dykema? A. I have.

Q. When was that? A. In September, 1916.

Q. Were you with the bureau of mines at that time?

A. I was with the bureau at that time.

Q. Did you go there to make an inspection in the course of your regular duties? A. I did.

Q. How long were you there in the plant, Mr. Dykema?

A. The better part of a day.

Q. Did you go over the plant thoroughly? A. I did.

Q. Did you see the product that they there produced?

A. I did.

Q. What was that product?

Mr. Swacker: I object to that question, not showing any proper qualifications, he certainly can't tell by looking at it what it is.

The Court: Well, did he examine it; did he make a chemical test, or physical test, what test did he make?

Q. How would you tell whether it was gasoline or not, Mr. Dykema? A. By its odor and its volatility.

Q. And could you tell from the manner in which it was produced? A. Yes.

Q. What was the product? A. Casinghead gasoline.

Q. What did it look like, Mr. Dykema?

A. It was a water white liquid.

Q. Just what kind of water, just what do you mean when you say water white?

A. Well, it could be compared to distilled water.

Q. Clear, transparent liquid? A. Colorless liquid.

Q. Was it unrefined naphtha? A. It was not.

Q. Mr. Dykema, what is meant by recovery in the distillation test?

A. The recovery in the distillation test is the quantity of the distilled liquid which is condensed and collected.

*Mr. Payne.*

Q. Is it a fact, that in the distillation test you take a quantity of fluid and by heating it it vaporizes and later condenses and goes over into another receptacle in the end of the test?

A. It is.

Q. Assuming that your subject contains the distillation test of a quantity of casinghead gasoline and the recovery you would say was 90 per cent, what would that 90 per cent be?

A. Be gasoline.

Q. Now, Mr. Dykema, would the fact that the products of the Kiefer plant of the Gypsy Oil Company failed to meet certain specifications of the customers of the Gulf Refining Company, show that the product was not gasoline?

A. It would not.

Q. What is that quality of gasoline which gives it starting qualities?

A. It is the quality of having contained among the hydrocarbons present, those which *volotalize* easily or at a moderate temperature.

Q. Isn't it a fact that if a gasoline has a lower boiling point that you have a gasoline that will easily start an automobile? A. It is.

Q. What is refined, Mr. Dykema?

Mr. Swacker: Object, it is not shown he is qualified as a refiner.

The Court: Let's lay the predicate, show his knowledge.

Q. What experience, what training have you had in refining, Mr. Dykema?

The Court: How has your experience in the petroleum business brought you in contact with the refining, so the court can determine the knowledge you have of that, that is the thing I have to pass on, whether or not it is competent.

Mr. Payne: May I make a suggestion, we are dealing with casinghead gasoline, he has had long years' experience in dealing with casinghead gasoline, I will change the question.

The Court: You asked a broad question.

Q. Would the blending of casinghead gasoline with naphtha be considered the refining of the casinghead gasoline?

A. It would not.

Q. Why not?

A. It removes no impurities from the casinghead gasoline.

Q. Would it be finishing?

A. I believe it would be termed a finishing process.

Q. From what standpoint would it be considered a finishing?

A. To be considered a finishing from the standpoint of working to a certain specification, to produce a certain product, when the two had been blended, your product would be finished provided it met certain qualities, certain conditions.

Q. Is it the general practice to blend casinghead gasoline with naphtha? A. It is.

Q. What is the purpose of that blend or mixing?

A. It has two purposes, one of which is to make it less volatile for handling, and the other is to conserve the product.

Q. Conserve the product. How does it conserve the product? A. It reduces the evaporation loss in handling.

Q. Does it tend generally to conserve anything else, specifically does it enable a refinery to make use of low grade naphtha?

Mr. Swacker: The witness has still not been qualified on refining.

Mr. Payne: This is on casinghead gas.

The Court: Read the question.

(Question read.)

The Court: I will sustain the objection to that, unless you show he has either an intimate or relative knowledge of the details of a refinery as to conservation and the economizing of the product.

Mr. Payne: Your honor, I might suggest that casinghead gasoline producers generally use naphtha in blending. Now, I just want to bring out the self-evident fact that they make a use of that naphtha producing a greater volume of gasoline of the quality desired.

Mr. Swacker: We will admit that is a fact.

The Court: Every witness on the stand testified that is true.

Mr. Swacker: We not only admit it, but we insist it is a fact.

*By Mr. Payne.*

Q. Is blending of the casinghead gasoline with naphtha usually done at the casinghead gasoline plant?

A. Most usually.

Q. Is it frequently marketed direct? A. It is.

The Court: Direct from the casinghead plant?

A. (No answer)

Q. Could the casinghead gasoline be marketed without being blended? A. It could.

The Court: For what purpose?

A. Buyers use that in blending with naphtha, making it their business, the blenders.

The Court: Purchasers that are not in the refining business as a business?

A. Yes, sir.

The Court: Not the dealers, they do not generally sell the product that way?

A. They sell to retailers, they deliver it to retailers, as far as I know.

The Court: Men that are not supposed to be jobbers?

A. Yes, sir.

The Court: Where do you know of that being done?

A. Berry Brothers, Sistersville.

The Court: Whereabouts?

A. West Virginia.

The Court: Are they in the refining business?

A. Were not when I was in their plant.

Mr. Swacker: We object, as being irrelevant, incompetent and immaterial, and not shown to be the same product.

The Court: Very well. I will strike it out.

Q. Could the casinghead gasoline be marketed without blending? A. It can.

Mr. Swacker: I object to the answer, and ask it be stricken, being irrelevant, incompetent and immaterial. Could it be—that is merely a prophecy.

A. It is.

The Court: You asked him if he knows of his own knowledge on the subject, if it is marketable, and in what way; that is testifying to a fact. I will permit him to do that. Now, you can testify what it is capable of being used for and the jury can pass on the question of whether or not it is marketable.

Q. In your opinion, Mr. Dykema, is it necessary to blend the casinghead gasoline before being marketed?

A. It is not.

Q. In your opinion, would the blending of the casinghead

gasoline with naphtha, be the refining of the casinghead gasoline? A. It would not.

Q. Would it be merely the mixing of one fluid with another? A. It would.

Q. Have you read any publications on the subject of casinghead gasoline? A. I have.

Q. Have you ever seen casinghead gasoline called by the name of unrefined naphtha in any of the technical works that you have read? A. I have not.

Q. Is unrefined naphtha a name known in the scientific world as describing casinghead gasoline?

Mr. Swacker: I object to that question, as incompetent, irrelevant and immaterial. He may limit it to his knowledge, but not to the world's knowledge.

The Court: What was the question?

(Question read.)

The Court: I will restrict it to his knowledge and information gathered from scientific books; I will permit it that far; then on cross examination you can find out the book. That puts it within a degree of certainty. I will permit him to answer it with that restriction.

Q. Will you answer the question with the restriction?

A. Will you state the question again, please?

Q. As to whether unrefined naphtha is known to the scientific world as casinghead gasoline, or rather, the reverse, is casinghead gasoline known or called unrefined naphtha in the scientific world, so far as the books and publications you have read? A. It is not.

Q. While you were with the Bureau of Mines, I believe you stated that you made visits to every casinghead gasoline field in the country? A. Practically so.

Q. Did you ever hear this product called unrefined naphtha? A. I never did.

Q. That is all—just a minute.

*Cross Examination by Mr. Swacker.*

Q. I believe that you said you have read a good deal of literature on the subject of casinghead, I will ask you to state if the title of all the works you are familiar on that subject, do not use the phrase casinghead, as a part of the name "casinghead gasoline"? A. They do.

Q. You refer to bulletin 151, of which you say you were the author in the Bureau of Mines, and I will ask you if that is it.

(The attorney exhibits Bulletin 151 to the witness.)

A. It is.

Mr. Swacker: I would like to read the witness four or five pages from this book as a predicate for subsequent questions to be propounded.

The Court: Very well.

*By Mr. Swacker.*

Q. Will you say if you made the following statement? I am going to read from this paper. A. I don't understand.

The Court: He is going to read this to lay a predicate.

Mr. Swacker: I am asking you about the material I am about to read.

(Whereupon, counsel reads from Bulletin 151 the following excerpts): "Blending and shipping the condensate.

"Although blending of compression-plant condensates is not done primarily for the purpose of making a product that will meet the specifications required by transportation laws governing the shipment of gasoline by rail or water, blending and shipping have become such important functions, one or the other, that a separate discussion of the blending process and the transportation of the blended stock is not desirable.

#### "REASONS FOR BLENDING.

"When the condensate produced by compression is allowed to weather unblended until its vapor tension is reduced to less than ten pounds at 100 degrees Fahrenheit and the temperature arises to atmospheric, losses ranging up to seventy-five per cent of the total product often result, whereas if the condensate is mixed (blended) with heavier grade still-run refinery distillates, the losses from weathering are reduced, usually to one-half that amount, and often more. This fact has led condensate producers to take advantage of blending to increase the volume of the products actually marketed, this increasing their profits and also the supply of marketable motor fuel so desirable under present conditions. The development in gasoline motors up to the present time has not reached a stage that would make the heavier still distillates, such as are used for blending a convenient or economical fuel if used as made, because of the difficulty in starting the motor with such fuel, and its tendency to deposit carbon in the cylinder and on the pistons from incomplete combustion, causing 'engine trouble'. Condensates produced by com-

pression is also an undesirable fuel for gasoline engines. It is exceedingly volatile, which causes losses in handling, is dangerous, because fumes are easily formed, and gives less power as compared with equal volume but heavier distillates, a larger number of gallons being required to develop the same power. It gives a quick, sharp explosion in a motor cylinder, but seems to lack 'push' after the explosion has taken place. In the above qualities it is in no way different from still-run products of similar gravity and similar in point, both products needing additions of less volatile, heavier, and more powerful fractions in order to form the most convenient and economical motor fuel. The latter fractions of the petroleum distillates, as compared with the heavier products, have a lower calorific value per gallon but a higher calorific value per pound. As all products of petroleum are sold in the United States by volume or liquid measure, the standard for comparison must be made on the heat unit per volume as not as per weight."

I am going to skip some.

#### "MARKETING UNBLENDED CONDENSATES.

"A small quantity of natural gas gasoline finds its way to consumers unblended. It is sold as 'gas-machine gasoline', a product which has a gravity of eighty to eighty-six Baume, used to make gas for certain domestic, commercial and chemical purposes, and as 'export gasoline', a product with a gravity of seventy-four to eighty degrees Baume scale, and four to six pound vapor tension, which is usually sold in containers to foreign trade."

Q. Now, is that the same material as you used—

A. No, it is not.

Q. And, under that same heading, "Marketing unblended condensates":

"The great bulk of condensates, however, is blended in one way or another before it reaches the consumer, but not always completely blended at the plant where it is made, or by the producer."

Now, what do you mean by completely blended?

Q. What do you mean by completely blended?

A. Having had as much naphtha or heavy product as can be absorbed and still be gasoline. #

Q. Is that necessary to make it usable as gasoline?

A. It is not.

Q. Is it necessary to finish it?

A. That depends on what you are trying to finish it to.



Q. You said in response to a question of the court awhile ago that the object was to finish the material. Didn't you tell the court that awhile ago? A. No, sir.

Q. What did you say about finishing the material?

A. I said it might be called finished whenever you bring it to any specification.

Q. Then the material before being finished is not finished is it if—as judged by some specifications until it reached those specifications, is that your idea?

A. It could be so called.

Q. And you might properly call it unfinished gasoline, in that aspect? A. No, sir.

Q. Why not? You say no? A. No, sir.

Q. You said it was gasoline? A. Yes, sir.

Q. And said it would not be finished for that purpose?

A. Unfinished, would be whether or not you were working to any certain specifications.

Q. That is what I am asking you, if you are looking to specifications, and have not met those specifications, it is not finished?

A. Gasoline, as I see it, has no particular specifications. There may be a number of specifications.

Q. We are talking about—I say it is unfinished gasoline as judged by such specifications? A. It could be so.

Q. Then you might properly term it unfinished gasoline?

A. You could.

Q. Wouldn't that be absolutely proper in that situation?

A. The names given these products don't depend on whether they are proper or not, they are incidental.

Q. All right. Now, then, I will read some more, a little further along, the last paragraph of that dealt with California and other parts of the country. I will now read from page 84, under the head, "Methods of Blending." "Blending condensates with the various distillates used for that purpose as practiced at present is done in stages and at many different points in the precipitation, storage or transportation of the product." Now, as you have here described—you have heard described the practice followed by the Gypsy. Is that a practice of doing it in stages, that is blending some at the casinghead plant in the fields and at the refinery, is that what you refer to here as doing it in stages? A. Yes, sir.

Q. Then it is not complete until it is done at the refinery, is that correct? A. No.

Q. When that is being done. You said it is being done in stages, the blending?

A. Well, will you put the question again?

Q. I say the blending is not done when you are doing it in

stages until it has been finished at the refinery, isn't that correct? A. That is correct.

Q. "The product of plants that ship their condensate without being blended usually goes to refineries or blending stations——" I will omit that. It refers to West Virginia. I will read on page 86: "Where blending is by refining or blending companies, as has been described, the operation is complete and the blended product is ready for market." Is that correct? A. It is.

Mr. Swacker: Now, I would like to read to you from page 87 this statement, under the heading, partial blending at the plant. "Partial Blending at the Plant." "Some operators, because of the plant being in a place where it is difficult or costs too much to bring in large quantities of naphtha, or, more often because the company controls their refinery and it is their desire to refine the gasoline by further treatment, such as distilling, have adopted the practice of blending only so far as it is necessary for shipment at the compression plant or blending station, the final blending and treatment being given at the refineries or point where the desired quantities and qualities of distillate may be more readily obtained. Some operators blend partly at the plant and finish the operation at the beginning station or loading racks as described above, thus saving the cost of handling, of pipe line, and of the pumping capacity necessary to transfer all of the heavy blending stock to the plant and back to the loading station." Omitting that last sentence is it the practice you have last described, the practice used by the Gypsy Oil Company you have heard described who own a refinery, that is, control a refinery and ship it there for further treatment in the refinery?

A. Not necessarily.

Q. Not necessarily, but you have heard testified what the practice was in the case of the Gulf Refining Company and the Gypsy Oil Company? A. Yes, sir.

Q. Is that the practice you were here describing?

A. No, sir, it is not.

Q. It is not the same practice?

A. It is not the practice that I am describing.

Q. Well, now let's see just wherein it is not the same practice, you say, "Some operators consider the blending in a place where it is difficult or costs too much to bring a large quantity of naphtha," now the situation is, the Gulf Refining Company is down at Port Arthur, is it not?

A. I so understand.

Q. And these casinghead plants are in Oklahoma and it

would cost too much to bring the other naphtha to blend the material?

A. I don't know what it would cost, I don't know whether it would be too much or not.

Q. You did not have in mind such a situation as this when you wrote this? A. Not that situation.

Q. "Or more often because the company controls the refinery," you understand the Gulf Refining Company does—"And desires to refine the gasoline by further treatment," you have heard the employees of the company all testify that the purpose of it was for the refining of the material there?

A. I heard them so testify.

Q. So at least, the desire was present in this case that you have heard here stated? A. I don't admit that.

Q. You do not—"Have adopted the practice of blending articles so far as it is necessary for shipping to the compression plant or stations, the final blend being given at the refinery," is that not the practice that has been followed, here as testified?

A. The blending was done at the refinery, yes, sir.

Q. But it was blended first at Kiefer, only sufficient to meet the transportation requirements, is that not so?

A. I understand so.

Q. "And operators complete the final blend and treatment being given at the refinery," is that not true? A. Yes, sir.

Q. You regard the statements made by you in that pamphlet entirely accurate?

A. I believe entirely accurate for the period but conditions have changed since then.

Q. Has casinghead, this particular casinghead gasoline made at Jenks and Kiefer changed any in the meantime?

A. I could not say.

Q. Now, you say you are familiar with those plants, at Jenks and Kiefer, did you not?

A. Not at Jenks, never entered that plant before night before last.

Q. Did you look at it to some extent?

A. Very slightly.

Q. Did you observe whether there were expanders on the plant there? A. I did.

Q. Did you say there were? A. There were.

Q. Do you know what the situation at Kiefer is, whether there are expanders there or not?

A. They were when I was there.

Q. Will you say whether the use of expanders in a casinghead plant results in the production of a different quantity than a similar plant using the same casinghead without expanders? A. That depends on the other points.

Q. What other points? A. You can reduce——

Q. What?

A. You can produce only the gasoline contained in the gas and the quantity will depend on the efficiency of the extraction.

Q. Will the qualities vary, depending upon whether or not there are expanders used? A. To some extent.

Q. Didn't you assert yesterday afternoon they would not?

A. I did not and so far as gasoline was concerned——

Q. Did you not assert yesterday that it would not make any difference in the qualities of the gas extracted?

A. I did not—— You asked me whether that would make any difference and I said it would make a difference in the running of an automobile.

Q. Were you——would you advise a producer what effect the expanders would have on the quality of the condensate that it would make no difference?

A. That depends upon the other points in the plant.

Q. Then you would not be in a position to testify there would be a difference in the material you would get from a casinghead plant?

By Mr. Payne: I object——

The Court: I will let that in.

Mr. Payne: He is talking about an automobile——

The Court: You can cross him on redirect.

Mr. Swacker: Are you in a position from what you now know to say what the effect of the expanders are on the quality of the gasoline would be, whether there would be a difference in the gasoline produced by not having expanders there or having expanders there?

A. You asked me if I consider myself qualified?

Q. Yes? A. I do.

Q. What difference would it make if you had the expanders, could you determine whether the material produced thereafter was the same or different from that produced therefrom before? A. A difference in quantity.

Q. I said quality?

A. You can produce the same thing by compression.

Q. I am asking you this question. Have you ever made any experiment upon the plant or upon the condensate from a plant as to the installation of expanders to determine whether or not there is any difference in the quality of the production after or before the expanders have been put on or taken off? A. That question cannot be answered.

Q. Did you?

The Court: Did you ever personally make such an experiment?

A. No, sir.

Mr. Swacker: Did you ever make such an experiment?

A. No, sir.

Q. Now, do you claim to know how it would affect the quality otherwise? A. I do.

Q. Just how would it affect the quality?

A. Increase the product.

Q. The quality?

A. It might not affect the quality at all.

Q. Do you know or claim to know, which, you say you do not know from actual experimentation, but you know, or have you been advised of the effects upon the quality of the gasoline produced before and after expanders had been installed?

A. Only by what plant operators have done.

Q. Are you able to say whether or not it would increase the per cent of the lighter hydro carbons in the container?

A. The expanders put on them?

Q. Can you, or do you assert here now that it would not increase the relative quantity of lighter hydro carbon than would be contained in it?

A. All other conditions remaining the same, the same materials in the case it would.

Q. When you state what you regard as gasoline, if it is recorded in your testimony as gasoline, I wish you would define to us what you consider the word to cover?

A. The lighter petroleum distillate, fit for use in an automobile, I use the word automobile because—

Q. Well, fit?

A. Probably be more engines of that type used on this gasoline.

Q. You say fit for use, you mean fit for the use of an ordinary car? A. An ordinary automobile.

Q. You say you have attempted to use, or have you used in your test here the word gasoline as embracing and being a material of lighter hydro carbon distillate of petroleum suitable for ordinary use in ordinary cars, that correct?

A. Yes, sir.

Q. Was this statement on page 82 of your bulletin No. 151 true, or not true. "Gasoline produced by compression is also an undesirable fuel for gasoline engines," is that correct or not? A. That depends.

Q. Well, is it true, or is it not true?

A. A great many cases it is not true and a great many cases it is true. A compression plant product can be made

where it is perfectly satisfactory for fuel and a great many instances so made.

Q. Was there anything wrong with this Pierce Arrow car you tried last night? A. Not that I know of.

Q. It caused engine trouble with it? A. No, sir.

Q. Did not have any engine trouble? A. No, sir.

Q. Didn't your engine get hot? A. No, sir.

Q. Didn't get hot?

A. I don't believe that was the cause of our stopping.

Q. You say your engine didn't get hot?

A. Not abnormally hot; had no trouble with the sticking of the cylinders, or anything of that kind.

Q. Exceedingly volatile?

A. I presume so. The vapor tension test would show that.

Q. Was it dangerous?

A. Not in the hands of anybody that could use it with any amount of reasonable caution.

Q. Was it more dangerous than what we call curb gasoline? A. Yes.

Q. Now, would there be any greater loss in handling that, than there would be in handling curb gasoline? A. No.

Q. Would it give equal power per gallon of mileage that curb gasoline would? A. Probably not.

Q. Would it give quick short explosions in the motor cylinders? A. It did not.

Q. It did not pop? A. No, sir.

Q. At no time?

A. It back fired twice, but as far as the explosions were concerned, it wasn't noticeable.

Q. Is that a desirable quality in gasoline to back fire a couple of times in the course of an hour?

A. It is liable to happen any time.

Q. It is liable to happen?

A. That isn't a quality of gasoline.

Q. Well, did it lack push? A. Did not.

Q. How fast did you go coming in from Kiefer?

A. As fast as safety would warrant, 35 miles an hour.

Q. Did you have it wide open?

A. No, we didn't instruct the driver concerning that only not to go faster than was safe.

Q. You know that a Pierce Arrow car is capable of traveling 60 to 70 miles an hour with ease, do you not?

A. I do, it wouldn't have been a safe speed however.

Q. Now, are you able to state what are the finished commercial products of an ordinary petroleum refinery?

Mr. Payne: I object.

The Court: Why?

Mr. Payne: Because the witness was limited on his examination in chief to casinghead gasoline and he was not allowed to testify in reference to refineries. This is not proper cross examination.

The Court: I think that is correct.

Mr. Swacker: He is testifying here as to what is or is not gasoline.

The Court: You asked though as to what the other products of a refinery were.

Mr. Swacker: Yes, sir, but he attempted to cover the whole range of petroleum distillation.

The Court: You made the objection on that and I held him down to it.

Mr. Swacker: I would like an exception.

The Court: Very well.

Q. Can you say gasoline is one of the finished products of a petroleum refinery? A. I can.

Q. Is it? A. It is.

Q. Now, what is that produced from? A. Crude oil.

Q. Well, is it produced from a particular part of the crude oil? A. It is a lighter fraction of the crude oil.

Q. What are those lighter fractions known as?

A. Gasoline.

Q. What are they when they are fractions, merely parts of crude oil known as—

A. I don't understand the question.

Q. I say, before they may be finished products, what are they known as? A. You mean after treating?

Q. At any stage up to the time they are finished products of gasoline, what are those lighter fractions of crude petroleum known as?

Mr. Payne: I object. You sustain my objection, and he goes right along on the same course.

The Court: Lighter fractions of what?

Mr. Swacker: Crude petroleum. He started to tell, to testify to the analogy of what he claimed happened under the ground and in the refinery, and take it on up to the lighter fractions—

The Court: What are the lighter fractions?

Mr. Swacker: That is just what I am asking him, what are the lighter fractions of the petroleum? I am not going beyond that.

The Court: I will let him answer.



Q. Is this finished product, gasoline, the finished product of what is known as naphtha, a fraction of petroleum?

A. The fractions including gasoline, has been called for a long time under the generic name naphtha.

Q. Naphtha is the generic name covering all lighter hydrocarbons, fractional distillants produced, above kerosene, even kerosene, is that correct? A. Including kerosene at times.

Q. And at times it extends down to and includes kerosene? A. Yes, sir.

Q. But in its known, correct usage, it includes that portion above kerosene?

A. It is too indefinite a term to pin down that way.

Q. You referred to this material as gasoline in response to my first inquiry, is gasoline and naphtha interchangeably used with relation to the material of which gasoline as a finished product is made? A. It can be.

Mr. Payne: I object to the question. It is too indefinite.

The Court: He has answered it.

Q. And is it so properly used?

The Court: Appropriately used.

A. I would not pass on it, whether properly used, these fractions are called distillates and in certain portions of the country they would not know what you mean by fractions. That is just a name—

Q. That is what I am asking you. Is it not a fact some people call gasoline, gasoline, and some people call it naphtha?

Mr. Payne: I object.

✓ A. The naphtha is a generic term.

✓ Q. And it embraces all gasoline, does it not?

✓ A. Yes, sir.

Mr. Payne: Just a moment. I object.

The Court: I don't think this is proper cross examination. I stopped you on that.

Mr. Swacker: I would like to ask the witness a specific question along that line, and that question is this—

The Court: He was confined to and examined about casinghead gasoline, and you objected to him being used as a general expert as to refinery methods, and I sustained it, and I required them to lay the predicate, and then they did not lay the predicate, and said they would just confine it to certain grounds.

Mr. Swacker: But he undertook to explain much earlier than that distillation processes of refining, to which we

made no objection, and I think we are entitled to cover gasoline as far as he did in that respect. He answered, if your honor recalls, a number of questions which your honor propounded to him, and he explained.

The Court: I will strike out all of the questions I propounded, and all of the answers to them, and admonish the jury that I just got that for my own information, and admonish the jury not to pay any attention to it.

Mr. Swacker: I assume he testified to that this morning on his direct examination.

Q. Did you say you regarded the process which you described beneath the earth as analogous to a refining process to the separation of the gas from the petroleum?

A. In so far as it separates those gases and vapors, I do.

Q. Does that constitute refining?

A. That is the reason why the products you get in a casinghead plant is refined. This is distillation or separation.

Q. Separation that involves vaporization, is refining?

A. Yes, sir.

Q. And when a material reaches the state of vapor, is it then a refined product? Is that correct? A. No.

Q. What is it, partially refined?

A. I never heard of it being spoken of as refined or unrefined when the—

Q. It is certainly not a refined gasoline when it is vapor, is it?

Mr. Payne: I object to that question, it being impossible of answer.

The Court: That is for the witness to say.

A. Gasoline vapor.

Mr. Payne: Gasoline vapor?

A. Same as you—

Mr. Swacker: You said that it was analogous to a process in a refinery, consisting of distillation in a refinery.

A. Parallel process.

Q. Now, then, that vapor, when it condenses, is a refined gasoline? A. It may be.

Q. Is that product subjected, so far as you know, to any further treating before it is sold as gasoline?

A. Very often it is further treated, and at times it is sold directly as gasoline.

Q. Can you tell me of any instance you know of, of the condensed vapor coming over from the first cut in distillation in a refinery being sold as gasoline? A. Yes, sir.

Q. Name where it was, and when?

A. Catalie, Alaska, in 1913.

Q. I am talking about the United States.

A. You didn't specify.

The Court: That is a part of the United States.

Mr. Swacker: I mean within the States themselves.

Mr. Payne: I object. It makes no difference where it was done.

The Court: He can state if he knows any other place.

Q. Do you know any other place?

A. I don't recall any other place just now.

Q. What were the circumstances under which that was done?

A. I don't know what you mean by circumstances.

Q. Was it a company refinery, or somebody that wanted this specially for their car, or what was their situation?

A. No, they were taking from the crude the things they could market; there wasn't a market there for lubricating oils and other products of the heavier fractions.

Q. Well, as to all the refineries you know of in the United States, what is the fact as to the practice as to the condensates coming over after the first cut, as to whether it is further treated in some fashion before it becomes refined gasoline and is so sold? A. In general, it is further refined.

Q. What are those processes of further refining?

A. Washing with acid, agitating with acid, treating with litharge.

Q. What further?

A. Nothing further necessarily in any of these.

Q. What further in addition to these processes you have named? A. I don't think of any.

Q. Well, you know of plant blending, don't you, at refineries? A. Yes.

Q. And they blend this very material off in refinery gasoline, don't they?

A. I couldn't state. We had gasoline long before there was casinghead gasoline.

Q. And they blended it long before there was casinghead gasoline? A. I understand so.

Q. And they did it at refineries as a part of the business of the refinery, did they not?

A. They did it at refineries.

Q. Now, you say that you consider this separation process under earth of the gas from the oil as a refining of the gas; is it not the fact that merely by means of this separating

process the crude oil would be refined in that case, having been separated, as it was, from the gas?

A. I can't see how you can refine crude oil, and still have crude oil left.

Mr. Swacker: Neither can I.

Q. I believe you also said nothing was refining or refined until or unless the impurities had been removed, is that correct?

A. I stated refining was a process of removing impurities?

Q. And unless there had been a process of removing impurities, there could be no refining, is that correct?

A. I think so.

Q. Then the article as to which there had been no removing of impurities would not be a refined article, is that correct?

A. It might be a refined article.

Q. It might be a refined article?

A. Yes, sir, if there were no impurities in it there would be no occasion to refine it.

Q. Then it would not be refined?

A. Would not have been refined, would not need refining.

Q. You say then it would not be refined, or would be refined? A. It would be termed a refined product.

Q. It had not been refined, however.

A. No, sir; however, it would be classified the same as other products which had been refined to bring them to the same point of neatness.

Q. Now, would you say that a perfectly pure product naturally so, which had no impurities, was unrefined, or would you say it was refined?

A. It would be classed as a refined product regardless of what treatment it might or might not have been through, it would be in the class of a refined product.

Q. That is your notion of the ordinary words refined and refining, is that correct?

A. The ordinary meaning of refining is making pure.

Q. And is a verb, that refining is a verb; to refine is a verb, to make pure, is that correct? A. Yes, sir.

Q. If it is unnecessary to make a thing pure because it is pure, it would be unrefined, though it would be pure.

A. You could make such a statement, make such a play of words.

The Court: He says it is classed, that would come under the old *adiom* axiom proposition, things amounting to the same equal each other.

A. As an example of that, Lake Superior Copper is never

refined from certain mines, it is melted and it is copper and goes on the market as wire copper.

Q. And has—after it is melted, it goes on the term refined copper? A. It is.

Q. And how described before it is melted? A. Copper.

Q. What else? A. Copper.

Q. Don't they call it Lake copper? A. Trade journals do.

Q. Isn't it always called Lake copper? A. No, it is not.

Q. It is, however, designated and you yourself designate it from other copper by calling it Lake copper, is that not true?

The Court: Now, I am going to bring this cross examination of this witness to a close pretty quick.

Mr. Swacker: He has covered a tremendous ground this morning.

The Court: You must adhere, I am going to bring this to a close.

*By Mr. Swacker.*

Q. I will ask you if this material is not frequently called raw casinghead? A. It is.

Q. You say it is known and sold as gasoline, did you not, this morning? A. Yes, sir.

Q. I would like to show you a copy of the National Trade News, and ask you if that is not a trade journal of the oil industry. A. It is.

Q. I will ask you to look at the item under Oklahoma, and where I am pointing my finger, and see how the material is described.

(Whereupon counsel exhibits to witness a certain book, and puts his finger on a certain paragraph.)

A. Raw casinghead.

Mr. Payne: Just a minute, please. Let me see what is going on here.

*By Mr. Swacker.*

Q. Did you—do you see any casinghead gasoline in this paper under the name gasoline? A. I don't know.

Mr. Payne: I object to that, whether he knows or not. That is not material.

Mr. Swacker: This witness has testified this commodity is sold and quoted in trade journals as gasoline, and I am showing him the trade journals to let him describe whether or not it is quoted in any of these trade journals as gasoline.

Mr. Payne: Part of it is called naphtha and gasoline.

Mr. Swacker: Gasoline and naphtha.

The Court: I will let it all go in for a while. Let that page go in, if you want to go in. It shows that under the head of gasoline.

Q. Look at the item 68-70—60-62—58-60 blend, and I will ask you if you can determine by those descriptions whether or not that is casinghead?

X A. The fact the word blend is used would mean it was casinghead—would mean it contained casinghead.

Q. Why would that indicate that to you?

A. Under the phraseology of the business.

Q. It is customary in trades of this product always to qualify the name gasoline by either raw or casinghead, or any particular kind of blend, naphtha, gasoline blend, and so forth, is that not true?

A. Very often designated as a description of the material.

Q. Did you ever know of anybody going up to a curb station and ask for gasoline and get raw casinghead gasoline?

A. Raw casinghead?

Q. Yes. A. I do not know.

Q. If you had ever gotten it, you only got it by describing it as raw casinghead or some particular blend, did you not?

A. I don't know what I got, I merely asked for gasoline and took what they gave me.

The Court: I am not going to allow this cross examination to be prolonged on this character of evidence. If you have anything else you want to bring out you had better proceed.

Q. Mr. Dykema, is it a custom to use curves to ascertain or determine whether or not a material is gasoline, is that a scientific practice?

A. It is a practice to study the distillation curves of a particular product. But whether you use it to determine whether a product should be called gasoline or not is questionable. You don't need a curve to determine whether it is gasoline or not.

Q. Well, is it a fact that scientific people in dealing with it do use these distillation curves to determine whether or not a particular material is a gasoline or not? A. It is not.

Q. It is not true?

A. No. They may use as to the points or curves to determine, but a complete curve is not necessary.

Q. But it is practically essential to determine whether the material is or is not gasoline? To at least have some of the distillation points, is that true?

A. No, sir, you can test it in other ways.

Q. How is that?

A. You can test it in other ways.

Q. You have to have the boiling point to determine it?

A. No, sir.

Q. Or fraction distillations of some kind?

A. No, sir, I would not say those are the only tests.

Q. Those are the ordinarily scientific tests, are they not?

A. Yes, sir, they are.

Q. Now, you described the still gas gasoline as coming off the still in the refinery, the first cut, as that coming from the refinery— A. Not necessarily the first cut.

Q. Whether the first cut or any other cut, is that ordinarily further refined, to make it a marketable product?

A. It is blended—

Q. To make it marketable?

A. No, it is marketable as it is.

Q. Have you observed the practice of trapping the proceeds of crude tanks or tank farms? A. I never have.

Q. Now, in the distillation of crude oil in a refinery after they have separated the naphtha fractions is not that material properly called unrefined naphtha?

Mr. Payne: Just a moment. I object, he is going right back to the refinery business.

The Court: Let him answer the question.

A. It can be so called.

Q. And properly?

A. It would designate about the product.

Q. Is it—state, the first time you ever heard that word, what did it purport to your mind, the word unrefined naphtha?

A. It meant the lighter cut of petroleum.

The Court: The lighter what?

A. The lighter cuts of petroleum, which needed further purification.

Q. And of those of which gasoline was manufactured?

A. No, just what I said.

Q. Those are called fractions of which gasoline is manufactured?

A. Part of that is cut out for gasoline fractions.

Q. That is, it embraced not only the material from which gasoline was manufactured, but some additional material?

The Court: Well, now does that embrace casinghead gasoline?

A. No, sir.

Q. But it does embrace this still gas gasoline, which you say is analogous to casinghead gasoline?

A. No, you are speaking of the product of stills, not a compression plant.



Q. I am speaking of still gas gasoline, I say that product was embraced within—

A. That could be called a naphtha.

Q. And an unrefined naphtha within this description which you say was imported to your mind when you first heard the word?

A. I did not include compression plant products. You are talking about a still vapor process.

Q. I am talking about still gas gasoline which comes over from the still, was that not a part of the lighter fractions of naphtha which you stated was the thing that occurred to your mind when you first heard the term unrefined naphtha?

A. Generically, it could be embraced in that.

Q. Now, you spoke of color being an indication of purity. It is a fact water might have thousands of germs in it and still not be pure and yet those germs in it not be discernible, isn't that true? A. I think so.

Q. So that color or transparency is no test of purity, is it?

A. It used to be a test of marketability of gasoline, and to this day people don't like discolored gasoline, though it may be no worse and it may be better than water white product.

Q. Now, when gasoline fails to reach specifications, what is ordinarily done with it? A. It is blended.

Q. So as to get it to some marketable specification, is that correct? A. Some marketable condition.

The Court: I think you have gone all over that.

Q. Now, this casinghead material we are talking about is frequently and very generally used by refineries as a raw material from which to make finished gasoline, is that not true?

A. Refineries are large purchasers of raw casinghead and also blended casinghead gasoline.

Q. And they use it as a material from which to make gasoline, is that not true, the finished product gasoline they sell?

A. I don't know what they do with it.

Q. You have told at great length—

The Court: He hasn't told—I will stop you on that.

Q. Now, in this distillation you claim takes place in the earth, if this is a part of the crude oil, as you claim it is, is it not a naphtha part?

A. In the broad sense, I think it could be called a naphtha part, although that impression is never given to any material in the earth, speaking of naphtha, naphtha is a refined product of naphtha distillation.

Q. Don't geologists, in making their reports describe the naphtha content of crude oil they may have found?

A. I have never heard of such a case. I don't know what a geologist would do in making a report of that kind.

Q. Have you ever heard crude oil classified by its contents naphtha and gasoline and down to the lower fractions?

Mr. Payne: I object.

The Court: I will stop this cross examination of this witness now.

Mr. Swacker: I have only had half an hour with this witness, and he has been on the stand three hours.

The Court: No, no.

Mr. Swacker: I think he has.

Mr. Payne: Is that all?

Mr. Swacker: The court says—

The Court: If there is anything that you have not covered, you can bring it to the attention of the court, and I will pass on it.

Mr. Swacker: I will get together very shortly while the jury is out, if you will give us a few minutes' recess. I may have two or three more questions I want to ask.

The Court: All right. Gentlemen of the jury, you will be excused under the admonition of the court heretofore given you, for a few minutes.

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(Whereupon court took a recess of five minutes. Whereupon court convened pursuant to recess, and the jurors having all been found to be present and counsel for the plaintiff and defendant announcing they were ready to proceed, the following further proceedings were had:)

Whereupon Mr. DYKEMA was recalled to the stand for further cross examination:

*Further Cross Examination by Mr. Swacker.*

Q. Mr. Dykema, this is that bulletin of yours, number 151, is it not? A. Yes, sir, it is.

Mr. Swacker: I would like to offer that in evidence, and ask that it be marked the next number Defendant's Exhibit 150.

The Court: It is admitted.

Q. Did you read the matter gotten out by the Bureau of Mines relative to this subject? A. Usually.

Q. Is that commonly regarded as authoritative literature?

A. I believe it is so considered by the public.

Q. Have you read the bulletin, technical paper 214 by E. W. Dean? A. I can not tell without the name of it

Q. Motor Gasoline Properties, Laboratory Methods of Testing and Practical Specifications?

A. I have read parts of it.

Q. Will you look at that and say if that is a paper issued by the Government?

A. I will identify it as a government bulletin of Mr. Deans.

Q. Do you know whether Mr. Dean therein stated the method of determining the material is by distillation curves?

A. I believe Mr. Dean uses that method.

Q. And the Department recommends the adoption and use of that method, do they not?

A. I don't know that they recommend it. They use it.

Mr. Swacker: All right. I will offer this in evidence as Defendant's Exhibit 151.

*Examination by Mr. Payne.*

Q. Mr. Dykema, in your paper on the recovery of gasoline from natural gas by compression and refrigeration, on page 83, you state that a small quantity of natural gas gasoline, finds its way to consumers unblended, it is sold as gas machine gasoline, a product with a gravity of 80 degrees to 86 degrees Baume used to make gas for certain domestic, commercial and chemical purposes and as export gasoline, a product with a gravity of 74 degrees to 80 degrees Baume and with 4 to 6 pounds vapor tension, difference and usually sold in containers to foreign trade. I believe you are asked on cross examination if that was the same gasoline that you used last night and you said no, I believe?

A. I did.

Q. And if not, wherein is it different?

A. In my experience I found that no two gases will produce exactly the same gasoline even under similar conditions. The gasoline spoken of there, as export gasoline is made by the Standard of Louisiana in a compression and refrigeration plant and without weathering is marketed and I was informed by their superintendent, Mr. Tubb, that they labeled it export gasoline and placed it in containers for export purposes.

Q. Is that the same type of gasoline that you used last night? A. It is the same type, it is casinghead gasoline.

Q. Now, on page 86 Mr. Swacker read one sentence reading, "Where blending is done by refining or blending companies as has been described, the operation is complete and the blended product is ready for market." Did you not say

in the next sentence, the blended gasoline made in the eastern fields has a gravity of so and so?

Mr. Swacker: I submit that is irrelevant and immaterial and has nothing to do with this material.

The Court: I suppose he wants that in to show he referred to that as blended gasoline.

Q. I asked you whether that statement was not in your bulletin, if you used the term blended gasoline? A. It is.

Q. Referring to your statement on page 87, "Partial blending at the plant," where you said the gasoline is sent to a refinery to refine the gasoline by further treatment such as distilling what was the nature of the product used in the case that you referred to, to blend with casinghead gasoline?

A. Some cases crude oil.

Q. Some cases crude oil? A. Yes, sir.

Q. And in that case would it require refining through a distillation process?

A. When it is blended with crude oil, it becomes a part of the crude oil and goes through the same processes as the natural product of the earth.

Q. Just like the crude oil?

A. Yes, sir, merely increases the crude oil content of any fraction added to the crude oil, in the casinghead plant.

Q. When it is blended in a refined product, such as naphtha, does it require any further refining? A. It does not.

Q. You spoke of unrefined naphtha; do you mean by that a distillate which requires further refining?

A. That term is more usually crude naphtha.

Q. Is that product—does that require any further refining ordinarily?

A. Ordinarily in the refining practice that is treated further, both the stills and other—

Q. Well, now, do you state that was the product from the distillation of crude oil? A. I would.

Q. This casinghead gasoline, is that a product that requires further refining?

A. It does not. I am speaking generally.

The Court: That is a repetition. He already testified to that. You are going over the ground already covered.

Mr. Payne: I just wanted to bring out the distinction between casinghead gasoline and unrefined naphtha.

The Court: You brought that out in chief.

Q. You speak of blending in a refinery, the refinery gas-

oline, I will ask you whether that blending comes after the refining of the gasoline is completed? A. It does.

Mr. Payne: Take a copper, such as the copper—

The Court: I think that is irrelevant. We are taking up too much time. I don't think that is relevant or material.

Mr. Payne: This is my last question.

Q. Is that copper which is in a crude state called refined or unrefined copper?

A. I have never heard it called unrefined.

Mr. Payne: That is all.

*By Mr. Swacker.*

Q. You said a minute ago, when blending is done on casinghead, no refining is necessary as to it except blending it with other materials, but that is a refining necessary?

A. I couldn't say so.

Q. You know it is with crude? It is mixed with crude?

A. Yes, it is often mixed with crude oil.

Q. Done with every grade of material up to a certain crude? A. That is not true.

Q. It is done with crude oil?

A. Yes, sir.

Q. Done with gas oil? A. Yes, sir.

Q. Done with gasoline distillate? A. Yes, sir.

Q. Done with naphtha distillate? A. Yes, sir.

Q. And naphtha distillate is unrefined distillate?

A. Crude naphtha is unrefined.

Q. And it is done with wax?

A. Not with wax and things like that.

Q. Those are materials beyond the first fractionation—

A. I don't know what you mean by first fractionation.

Q. Oh, I see, I don't know that you qualified as an expert refiner, and I will leave that. You state that on your cross examination you said this matter that you described as "gas machine gasoline", is that the same as you used last night in the experiment, is that correct?

The Court: He explained that.

A. As to gravity it is not, but as to its source it was.

Q. Not to the extent. You state on your re-direct to Mr. Payne it was the same type of gasoline, did you not?

A. I did.

Q. I will ask you to look at the Oil Paint and Drug Reporters Journal of date 1920, and see if it is not quoted there at twenty-two and three-quarters cents, casing-

head, and whereas gas machine gasoline is quoted at 47½ cents; can you explain the discrepancy there if there is not so much difference?

Mr. Payne: I object. He can have no knowledge of what is quoted there.

Mr. Swacker: It is a fact this journal does show gas machine gasoline under the gasoline heading?

A. Yes, sir.

Mr. Payne: I object.

A. Not as to the casinghead we used last night, it is not that casinghead.

Mr. Swacker: That is all.

Mr. Payne: That is all.

And thereupon, EDWIN DE BARR, produced for and examined as a witness for and on behalf of the United States in rebuttal testified as follows:

*Direct Examination by Mr. Payne.*

Q. State your full name? A. Edwin De Barr.

Q. Where do you live, Dr. De Barr?

A. Norman, Oklahoma.

Q. What is your connection at Norman?

A. I am vice president of the State University and head of the department of chemistry at the present time.

Q. What academic degrees do you hold, Doctor?

A. Two Bachelors, one from Michigan Agricultural College, one from Michigan State University. A Master's Degree from Michigan Agricultural College and P. H. D. from Michigan State University, the major work being done in chemistry.

Q. How long have you been vice president of the State University at Norman?

A. Of the State University since statehood.

Q. How long have you been a professor at the college?

A. Since the first day of September, 1892.

Q. Doctor, what scientific research and what experience have you had in petroleum products?

A. I have been studying and investigating it in the country ever since the development at Bartlesville.

The Court: How many years has that been?

A. I don't know just now what date that was, your honor, but a good many years ago, couldn't give you the date. I have

tested out several plants in several ways, especially cracking plants and have considerable data in visiting absorption gasoline plants and refineries in the State of Oklahoma.

Q. What particular investigations have you made, doctor, in reference to casinghead gasoline?

A. I investigated the explosion at Ardmore, some years ago, took place a few years ago; investigated that explosion from casinghead gasoline.

Q. Have you made other investigations into the subject and experiments?

A. Yes, sir, in the laboratory and investigations of the gases from various oil wells and the oil from which these gases were taken in the Blackwell field and the Cushing field and in this north extension of the Glenn pool and down here at Beggs, I believe it is Beggs.

Q. Doctor, what product is it that casinghead gasoline plants produce by the compression of casinghead gas?

A. Casinghead gasoline.

Q. What other kind of gasolines are there?

A. Motor gasoline, casinghead gasoline, gas machine gasoline, cleaners gasoline, many varieties, depending on the purposes for which it is to be used.

Q. What are the principal methods of the manufacture of gasoline?

A. By compression and refrigeration of the natural gas, by compression, refrigeration and absorption of the natural gas gasoline, by cracking and making synthetic or artificial gasoline, by the process of straight cut or straight cut run refinery gasoline.

Q. Then gas gasoline, natural gas gasoline, straight run refinery gasoline and the crack gasoline? A. Yes, sir.

Q. Is the product of casinghead gasoline, you stated, casinghead gasoline properly denominates unrefined naphtha?

A. No, sir.

Q. Why not, doctor?

A. Because it is pure refined product as determined in most cases, especially in this field.

Q. How does it reach that stage of *refinedness*?

A. Its natural conditions in the earth, the means of communication by pipe lines from the earth and various apparatus employed until it reaches the storage tanks.

Q. In a liquid form? A. In a liquid form.

Q. Would the blending of casinghead gasoline with naphtha which has been given the usual three refinery processes, blending the casinghead gasoline produce unrefined naphtha?

A. No.

Q. Why not?

A. Because both products before put together are refined



and putting two refined products together is not a process of refining, the question of blending is simply a process, it is not a question of refining.

*By Mr. Payne.*

Q. Could it be possible to take casinghead gasoline and blend it with refined naphtha and secure what might be termed unrefined naphtha, and by addition of more of the same naphtha come back to gasoline?

A. Not that process to produce gasoline, no.

Q. Is casinghead gas, a gas which is produced by a natural distillation process in the earth?

A. I don't quite get that. Mr. Stenographer, read that.

(Question read.)

A. Yes.

Q. State the gravity of the gasoline which is usually used in gas machines?

A. Desirable to have 86 degree plant, but for about eight years, we have been unable to get much above 82, 82 is not so satisfactory as 86, but does very well.

Q. Wouldn't the fact that a particular gasoline is somewhat too volatile for economical uses in an automobile justify the calling of that gasoline something else? A. No.

Q. Does casinghead gasoline—

A. I didn't get that first part.

Q. Does casinghead gasoline have practically the same chemical properties as refinery gasoline?

A. Very similar and in many cases nearly identical, except in proportion.

Q. Except in proportion? A. Yes.

Q. Doctor, what is meant by recovery in the distillation test?

A. It means the amount of recovery in the complete distillation of a measured sample and measuring the amount of volume recovered from a given volume.

Q. Now, assume that you should subject the product of a casinghead gasoline plant to the distillation test, and your recovery should only be 88 per cent, what would that 88 per cent be? A. Gasoline.

Q. Would the fact that the products of the Gypsy plant failed to meet specifications of their customers for gasoline justify the calling of that product by some other name?

A. No.

Q. It would still be gasoline? A. Yes.

Q. What quality in gasoline enables the prompt starting of an automobile?

A. The low boiling constituents possessing properties of ignition when a spark is applied to it.

Q. Is it a fact that the more volatile the liquid is, the easier it is to start the car?

A. Yes, sir, to start the engine moving, that is the ignition of it, this answer applies to these latter constituents of the lighter casinghead gasoline.

Q. Would the blending of casinghead gasoline with refinery naphtha, would it in any way tend to refine the casinghead gasoline?

A. No, not as it comes from these, in this particular case.

Q. It is the mere mixing of the two together—

A. Take the casinghead gasoline that is perfectly refined, pure, as it comes from the earth, the blending does not refine the gasoline.

Q. And would the fact that the casinghead gasoline is blended in order to lower its gravity justify calling the casinghead gasoline unrefined naphtha? A. No.

Q. Doctor, do scientific works call casinghead gasoline unrefined naphtha?

Mr. Swacker: I object, unless the witness shows what scientific works he has in mind.

The Court: You may first show the predicate. He has read scientific works and the character of some of them.

Q. Have you read scientific works on the subject?

A. I have, many of them.

Q. Did any scientific work you have ever read refer to casinghead gasoline as unrefined naphtha?

A. I do not know of any that have.

Q. How many?

Mr. Swacker: My objection just goes because it wasn't limited to the books he read. I want him to limit his question to the books he has read.

A. I read quite extensively on the subject.

*By Mr. Payne.*

Q. Does the trade, so far as you know, ever call or refer to casinghead gasoline as unrefined naphtha?

A. I have never seen it in the trade journals.

Q. Take the case of the blend of casinghead gasoline with refinery naphtha; is that referred to anywhere as unrefined naphtha?

A. The only place I know of is in Bacon & Hamor and probably some things that is quoted therefrom.

Q. That is on the subject of casinghead gasoline?

A. No, not under the head of casinghead gasoline.

Q. The only place you have ever seen the term unrefined naphtha?

A. Yes, unrefined naphtha.

Q. Would—did that describe casinghead gasoline as unrefined naphtha?

A. No, sir.

Q. Wouldn't casinghead gasoline run a motor car?

Mr. Swacker: I object; incompetent, irrelevant and immaterial; doesn't show the particular kind of casinghead gasoline involved.

Q. Have you used casinghead gasoline in any car?

A. Yes.

Q. When and where?

A. During the investigation of the natural gas situation for preparation before the Corporation Commission I drove a Paige car—

Mr. Swacker: I object to further testimony, unless it is shown what material came from these plants, and that it is identical.

The Court: Let's see, and then I will be able to rule on it

A. I ran a Paige seven-passenger Sedan a great number of miles.

*The Court.*

Q. What sort of casinghead gasoline did you use?

A. I will get to that your honor. I will describe that.

The Court: Yes.

A. A part of the time on casinghead compression gasoline and absorption plant, both combined; and in another case, on certain compression casinghead gasoline. At an investigation for the North American Refinery, held at Cushing, I believe three years ago this summer, from some certain compression plants I drove a Ford car several hundred miles on compression gasoline. Also one of the Cushing plants. And I drove a Dodge roadster with compression casinghead gasoline quite a time, some week or two, in that distance, with nothing but casinghead compression gasoline.

Mr. Swacker: I ask now that that be stricken out as incompetent, irrelevant and immaterial, not properly identified as being the same material.

The Court: I will overrule the objection.

Mr. Swacker: Exception please.

Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

Q. Doctor, how did you come to drive these cars that you spoke of just now, were you experimenting or what?

A. The company for which I was laboring furnished me the gasoline without cost to myself and so I didn't buy it, it was given to me.

Q. You were not trying experiments?

A. I just drove it over the country with that particular kind of gasoline.

Q. Do you know whether you had drip or not?

A. No, it was drawn from the tank directly from which the casinghead gas was taken.

Q. Now you made some statement before the Oklahoma Corporation Commission, to the effect that you would not allow your wife to use this material in your car didn't you?

A. No, sir, I didn't.

Q. Something to that effect? A. No, sir.

Q. What did you say?

A. I said I considered in the making of gasoline that the end point to be necessary for the common people to use in a machine would need to be regulated in its volatility for a general use, but for a man like me, it need not be regulated. I didn't consider that my knowledge would entitle me to any protection with regards to volatility whatever.

Q. In other words, you think the ordinary users, they ought to be protected against this material as it is commonly manufactured on account of the volatility?

+ A. Yes, I do, the general public needs some protection.

Q. A scientific man who knows and understands the thing can handle it alright, but the ordinary people can not?

A. I did handle it, I have not let my wife run it because she was not in the field to run it, had she been, she would have ridden with me.

Q. But you would not care to let her go out and run it alone?

A. Unless she learned how to use it and then I would not care.

Q. And, Doctor, you made some experiments in the University in relation to the use of it for gas machine gasoline?

A. We have made some experiments and still making them for private corporations that are not ready for publication.

\*Q. Without regards to those not yet ready for publication, did you ever, or did you advise, or previously announce that it was unsatisfactory and so report to the Oklahoma Corporation Commission?

A. I don't believe I did report any case of unsatisfactory gasoline to the Corporation Commission, I do not recall it if I did.

Q. Now, if you make any kind of successful usable gas machine gasoline out of it it is necessary to give it the acid treatment it ought to have it is that not true?

A. Most of these casinghead gasolines in this state need no acid treatment.

Q. I am talking about making gas machine gasoline?

A. It is better but I don't know whether I have ever had, what I have had has been treated with acid or not, I think I have had some from the Cushing field that was not treated at all with acid.

Q. You have noticed the commercial quality of gas machine gasoline is about double the price?

A. Yes, we are at the mercy of the dealers and their prices.

Q. It is in fact necessary to make gas machine gasoline with a good deal of more care than is necessary to be taken to make ordinary motor fuel?

A. Yes, sir. The care of a particular kind has to be taken.

Q. What kind?

A. To see it is especially volatile and the over point is plenty low and the end point not too high.

Q. It is a very substantial element whether the material is a usable material, what its boiling points are?

A. Certain portions of its boiling points is very material.

Q. You said a while ago the low initial point is generally indicative of a certain quality in the way of starting cars?

A. In the way of ignition to start the machine.

Q. There is such a thing as having such a low initial point it would be so volatile it would not start at all?

A. I have been unable to ever find ninety gasoline that would not start a motor of the type of the continental red seal motor.

Q. It might start that but would not start an ordinary motor with it when it ran below?

A. Start a Rotenberg motor made by the Continental people, the Paige-Lyndwood motor made by the Continental people. The Paige-Lyndwood type, I know it will do that.

Q. When you do get below ninety, it will not start what type?

A. It will not start the ordinary type. The Buick is hard to use it in; hard to prime, but the other cars have pet-cocks in the top, have been able to start it with putting a few drops of 80 to 86 gasoline in the pet-cocks in the top.

Q. Do you know what is the fact, what the Corporation

Commission of Oklahoma has done with respect to ruling as to whether or not taxes should be paid on this material as gasoline, whether inspected and taxed for gasoline?

Mr. Chambers: I object.

The Court: You need not answer that.

Mr. Swacker: I think it is perfectly proper to show what the use of a term as provided by law, as being construed by the Corporation Commission.

The Court: That would involve too many issues, all that would have to be before this court. I exclude it.

Mr. Swacker: Well, may I ask him if it is not the fact that taxes and inspection is not extended to this material, gasoline taxes and inspection?

The Court: I will not permit that.

Mr. Swacker: I would like an exception, please.

Q. Now, in answering the questions on your direct examination, you used the word refined as synonymous with pure, did you not? A. I did in a certain sense, yes.

Q. Well, when you were saying that this was a refined product, you meant to use it synonymously with the word pure, that it was a pure product?

A. In a way yes, in a way, that it didn't need any more. It was pure sufficiently for the purpose for which it was to be applied or used.

Q. The word refined also is used in a sense otherwise of something which has been refined by some process, isn't that true? A. There are cases in which that is true.

Q. You were only using it in the sense of pure?

A. Yes, and doesn't need any purification for the purpose for which it is applied.

Q. But it is also necessary, in the manufacture of gasoline, even in the sense it is pure, to do something to correct its boiling point? A. Yes.

Q. And that is frequently done by a refinery?

A. Yes, and it is done without one. With or without one, either.

Q. Now, you have known casinghead to be blended into crude, have you not? A. Yes.

Q. Suppose you had an absolutely pure crude, it would still be necessary to refine that product if it was blended with it in order to get gasoline, wouldn't that be so?

A. If it was pure, I don't know whether it would need some other treatment besides blending.

Q. No, but I mean—In order to get gasoline out of the material which had been blended into crude, even though the

crude was absolutely free from impurities, still it would be necessary to refine this crude to get gasoline?

A. In case you would have to reduce part of the petroleum it would have to be removed, part of it, yes.

Q. So far as that weathering casinghead gasoline, you are disposing of the lighter parts? A. Yes.

Q. And they are extraneous to gasoline?

A. Depends on which you want to use it for. If you want to use it as motor gasoline, you want to get an automobile is a large amount, you want to get a large amount of the volatile ingredients to make an economical motor.

Q. Too much of these lighter parts are extraneous to such materials?

A. I don't know whether extraneous or undesirable.

Q. Isn't it a fact there are gases, no part of the material that becomes gasoline, which are incorporated in and escape incident to the weathering?

A. Read that.

(Question read.)

A. I wouldn't say that definitely, some parts of those gases would not be disposed of in weathering. You don't get rid of that altogether. You don't even get rid of the methane entirely.

Q. Some of them—

A. Some of them, but not all of any of them.

Q. But getting rid of some of them is necessary to make a motor fuel?

A. To make an economical one, but it is not to make a usable one. Depends on how much a man ought to pay for it.

Q. Limited it to what would be weathered off?

A. That is true, and in many I would like a few more of the volatile materials in it, and some of them I would not like so many. Some purchased at the curb have too much and some not enough.

Q. That is one of the corrections of the boiling points when the casinghead is sent to a refinery?

A. That may be done at the plant.

\* Q. But it is done there at the refinery? A. Yes, sir.

Q. That is one of the objects of sending casinghead to a refinery, to correct its boiling point?

A. That is one of the purposes.

Q. For general purposes the boiling points of casinghead are not proper boiling points?

A. Not for motor gasoline fuel, no not for economical motor gasoline, no.

Q. Now, I am not sure I heard you exactly correct; did



you say that casinghead gasoline was substantially the same as refined gasoline except as to its—

X A. The constituents are very similar, but the proportions of the constituents are usually different, unless you go deep down into your fractions. And to go into cracked gasoline, even in straight refinery production. I suppose you meant I shouldn't go into the cracked. I was taking the ordinary lighter gasoline.

Q. That is correct as to all the naphtha products, that is its only relation, the various constituents that determine what it is? A. All of what?

Q. All the naphtha fractions of crude oil?

A. Well, now, I don't know about that.

Q. Well, let's get at it this way. You know what is called naphtha? A. Yes, I know what the refineries call naphtha.

Q. Now, that has the same constituents as refinery gasoline, but only in different proportions, is that correct?

A. That may be different and may be the same.

Q. That is the principal difference, generally, in them; that causes the difference in gravity that is noticeable?

A. The difference in gravity is either caused by proportions from light oils or from heavier oils. Lighter constituents, I should say.

Q. In the case of naphtha, there is a preponderance of heavier light ends of naphtha fractions whereas in the case of refinery gasoline, it is—there is a preponderance of the lighter ends of naphtha, isn't that true?

A. It depends upon what naphtha you use.

Q. Take naphtha and gasoline from the same crude.

A. You take the naphtha, that is subject to great limitations, you know, because what was naphtha a few years ago, is entirely different from naphtha today, for even what you might call the unrefined naphtha. Your kerosene begins so much lower that you have to get further down.

Q. Yes, but it is generally true throughout its history that in naphtha, also in naphtha fractions, the heavier naphtha fractions of hydro carbons predominate, whereas in gasoline the lighter fractions of hydro carbons prevail?

A. I believe that is your contention.

Q. Don't you think that is true?

A. In a measure; and in a measure it is not true.

Q. The fact is the casinghead you say bears that relation to the refinery run gasoline, does it not?

A. What I might explain is that the lighter hydro carbons are in larger proportion in the casinghead gasoline and the heavier constituents, hydro carbons, are present in the lesser amount, while in the straight run gasoline you might

have a preponderance of the lighter ones or still going down, you have the heavy constituents, but it will also have the lighter ones, and it some times and in some fields varies in this Mid-Continent field, just the same as the casinghead gasoline.

Q. You almost said casinghead naphtha. A. No, sir.

Q. You got that far?

A. No, sir; I have known naphtha from casinghead naphtha; never heard of the name in my life until I heard of it in this case.

Q. Naphtha is a proper generic—?

A. I will not say I never heard of it in my life. I have heard of it in patents, but not papers or books.

Q. You know the Interstate Commerce Commission says in its transportation regulations—?

A. No, sir, I am not familiar.

Q. You are not familiar with that?

A. I have enough work to look up without looking up the transportation matters, I have too many other things to look up.

Q. You don't know whether they used the name or not?

A. I don't know about their using it and using it in the books, they don't use the word casinghead naphtha; that is the—that is a thing that has been coined in the last year or so.

Q. Naphtha is the proper designation of all lighter hydro carbon distillates of crude oil?

A. It is so designated by the refinery.

Q. And by the writers generally?

A. Some writers do; many writers, in fact.

Q. And there is a great deal of interchangeability of the use of the name naphtha and gasoline applied to the material more properly called gasoline?

A. Yes, sir, interchangeability of the use and confusibility in the use.

11 Q. Extreme confusion, that is so?

A. Yes, sir, extreme confusion in it.

Q. Has it been your observation that people miscall a great many of the constituents of petroleum and the products and the miscalling of the constituents of it by misnaming the product instead?

A. I think that is quite generally true with most all classes of business.

Q. As a matter of fact, expert refiners will very frequently refer to material in the name of the finished product to be made from it?

A. Yes, sir, as many different opinions as there are expert refiners.

Q. Of course, you stated a few minutes ago that the prin-

principal difference between the refinery gasoline and the casinghead gasoline was in the degree of the preponderance of the lighter as against the heavier hydro carbons, of course that is also a test as to whether or not you could run a car, you could get down to the point where you could get such a preponderance of the lighter hydro carbons as it would not run a car at all?

A. Yes, sir, as well, as too heavy.

Q. Yes, get it down to where it is too heavy by a great preponderance of too heavy hydro carbons? A. Yes, sir.

Q. And get it up to where it is too light?

A. To run perhaps economically and entirely satisfactorily with all grades and of cars, possibly so.

Q. Do you remember what definition is given by Bacon & Hamor, of unrefined naphtha, what it covers?

A. I cannot quote it, I would rather read it.

Q. Was it not in substance those naphtha fractions boiling up to 150 centigrade?

A. I believe that is what they said. Those fractional distillates boiling up to 150 centigrade.

Q. And now you define this stuff as material that would be within that scope, boiling up to 150 degrees, Centigrade, is it?

A. I believe your data I have heard on this, this material is. I have seen casinghead gasoline that would comply with it.

Q. Assuming all casinghead within that definition used by Bacon & Hamor?

A. That would be as you want to interpret it.

Q. That would be correct?

A. I don't know. You stated what that was, unrefined.

Q. The word used was unrefined naphtha and the definition was those boiling up to 150 degrees centigrade, isn't that naphtha fraction?

A. I don't know with this definition and—you mean under that head was obtained—I think it would mean a certain operation.

Q. That is the only manner you follow. He was referring to the still fractions and you were referring to earth fractions, still both would be naphtha fractions?

A. One would be casinghead gasoline fractions and the other not.

Q. What I am trying to get at is naphtha fractions.

A. Casinghead gasoline—

Q. Yes? A. I call it gasoline.

Q. But nevertheless it is naphtha, that is true?

A. You do—

Q. Don't many writers take all of the hydro carbons that are lighter than kerosene, they class them as naphtha?

A. As derived from the crude petroleum, yes.

Q. And your theory in regard this material, is it is derived from the oil only this is done underground by nature?

A. Wouldn't sell that as petroleum oil and get an eighth royalty on it.

Q. That is a question, whether it is part of the petroleum oils or not. A. Yes.

Q. It is a well settled theory that is is not part of petroleum oil?

A. Some people believe it, but most people believe part of it.

Q. The decisions of this state held it is not.

A. I don't know what the late decisions on it are. I haven't heard it for some time. I haven't heard.

Q. By the way, have you noticed also a Bureau of Mines publication which used the term unrefined naphtha?

A. I believe that is where—I judge probably that term originated.

Q. By the Bureau of Mines circular?

A. Within the last few years, that is my opinion. I don't know whether Mr. Bacon and Hamor originated that, or the Bureau of Mines originated it. Originated about the same time I suspect.

Q. In your university work you always, of course, when you are trying to instruct anybody, distinguish this material from gasoline by calling it casinghead gasoline?

A. I call this casinghead gasoline just like I speak of ordinary gasoline as motor gasoline and gas machine gasoline as gas machine gasoline.

Q. But you consider the proper name to be casinghead gasoline?

A. That is the way I designate it from gasoline, every gasoline has a special prefix.

Q. Gasoline does not embrace as commonly used casinghead gasoline, does it? A. Yes, it includes it.

Q. When you are talking to your classes, when you speak of gasoline, you don't embrace in that casinghead gasoline?

A. Well, when I am talking about motor gasoline, I instruct them what the component parts of it are before I get done with the entire description of gasoline.

Mr. Swacker: That is all.

*Redirect Examination by Mr. Payne.*

Q. Doctor, you mentioned the Bureau of Mines publication as referring to unrefined naphtha; does that not mean what it says, naphtha that is unrefined? A. Yes, sir.

Q. And one that requires refining?

Mr. Swacker: I object to his attempting to state what the written word means.

The Court: So far as the question relates to what that means, he may testify to what he thinks unrefined naphtha is. But he can't go into what that book says.

Q. Now, on cross examination, there was referred to the confusion of that term. I will ask you whether there is any confusion between the terms refined and unrefined?

Mr. Swacker: I object to that, unless the witness is qualifying to show a different usage than the ordinary meaning of words provided by the dictionary.

The Court: You asked him about that, and I will permit him on re-direct examination to state if there is any confusion.

The Witness: Get that question, Mr. Stenographer, please.

(Question read.)

A. Not in my mind.

Q. So that when refiners refer to an unrefined product they mean just what they say?

Mr. Swacker: I object, the witness said what is in his mind and now he is being asked what is in the refiners mind.

The Court: Yes, I think so, sustain the objection.

Q. On the direct, you referred to at least three kinds of gasoline, when you say gasoline, you don't mean any one of the particular kinds, do you? A. I don't.

The Court: You include, you use it as a generic term you mean?

A. I use gasoline as a generic term, I use the plural when I want to speak of any particular kind of gasoline I specify the prefix to indicate what kind of gasoline.

*Further Cross Examination of the Witness by Mr. Swacker.*

Q. In other words you use it as a generic term covering all specifications of gasoline? A. Yes, sir.

Q. And that would embrace whether it was a finished or an unfinished stage?

A. Possibly slightly unfinished but not unfinished for the purposes for which it is to be used.

Q. Has to be to that degree of finished, going to be used for gasoline, but if they have achieved that degree of finish, it would embrace them in the definition of gasoline?

A. Yes, sir, I would not consider any of them completely finished.

Q. Now, from your observation of the practice of refiners, I will ask you if it is not their practice to use the word refined as applicable to the products produced by their refinery?

A. Yes, sir, they do, I suspect, that is my opinion, that is what I have got from talking with them.

Q. And your reading your observation is that is true?

A. Yes, sir.

Q. And that is applicable to a finished marketable product that has been finished in that refinery?

A. There or some of their collateral plants belonging to them

Mr. Swacker: That is all.

Mr. Payne: The government rests.

The Court: Witness stand aside.

(Witness dismissed.)

Mr. Swacker: We will have four or five more witnesses. The government has rested in rebuttal may I ask?

The Court: Yes.

Mr. Swacker: May we have a few minutes to confer, four or five minutes.

The Court: Yes.

The Court: The jury may be excused for four or five minutes.

(Whereupon jury are excused for a few minutes.)

(Whereupon jury return into court after a short recess.)

### *SURREBUTTAL.*

Whereupon, CHARLIE O'DONNELL, a witness called for and on behalf of the defendant in surrebuttal, having been first duly sworn, upon oath, according to law, took the witness stand and testified as follows, to-wit:

#### *Direct Examination by Mr. Green.*

Q. What is your name? A. Charlie O'Donnell.

Q. What is your name now? A. Charlie O'Donnell.

Q. What is your business A. Taxi driver.

Q. Speak up so the jury can hear you?

A. Taxi driver, a livery car driver.

Q. Did you drive a Packard car for some of the government attorneys and agents night before last?

Mr. Payne: We object to this line of testimony, not proper surrebuttal.

The Court: I will permit it.

Mr. Green: Just to lead up to it, did you go down there and make an experiment on the road?

A. Yes, sir

Q. At the time you drained the tank, did you open both drains or one? A. Just the one.

Q. Have you since made an examination of that tank with a view of determining whether your opening the one would get all of the oil out?

A. You get it out by draining one, not all of it, I have found out since you have to drain them both.

Q. What is this tank that the oil remains in, what is that called? A. Called the reserve tank.

Q. How much oil will it hold? A. Five gallons.

Mr. Green: That is all.

*Cross Examination by Mr. Gann.*

Q. Did you know that this was an experiment that was being made? A. No, sir.

Q. Why did you call it that?

A. I heard the rest talking about it.

Q. Did you drive from Jenks to Tulsa with gasoline of 86 degrees that was put in the car? A. I don't think so.

Q. You don't think so? A. No, sir.

The Court: Did you know at the time they were trying to drain it?

A. Yes, sir.

The Court: Why didn't you point out the other reserve tank to them?

A. Really I didn't know there was a reserve tank.

The Court: How come you to find it out since?

A. I was talking to the Packard man yesterday evening.

The Court: How come you to be talking to the Packard man yesterday evening?

A. On account of that test, or whatever they was doing to it.



The Court: Who was the Packard man?

A. I forget what his name is.

Mr. Swacker: He was the man that participated in the experiment yesterday.

The Court: Never mind about this, I will find out. Who was the Packard man?

A. Really I don't know what his name is, I have heard it too.

The Court: How come you to be talking to him?

A. Well really to find out if there was a reserve tank on it.

The Court: How come you to want to find out if there was a reserve tank on it if you didn't know it when they were draining it to get ready for a test down here at Jenks?

A. I didn't know you had to take them both out.

The Court: How come you to find it out yesterday?

A. I asked the Packard man.

The Court: How come you to ask the Packard man?

A. I was telling him about being down there the night before.

The Court: How come you to ell him about it?

A. We was talking about gasoline, that was one reason.

The Court: When was the first time you talked to any of these men on the other side?

A. The first time I talked to them? Late yesterday evening I guess it was.

The Court: Who did you talk to then?

A. I don't know who it was, he said he wanted a Packard car. I came in from the country and he said he wanted to go to Jenks.

The Court: Go ahead with the witness.

Q. You say there was a reserve tank that was capable of holding five gallons? A. Yes, sir.

Q. That was the full capacity of the tank?

A. Full capacity of the tank.

The Court: How long have you been running this car?

A. Since the sixteenth, I bought it the 16th.

The Court: 16th when?

A. This month.

The Court: You didn't know that reserve tank was in there?

A. No, sir, I didn't.

Q. Was there any gasoline in the reserve tank?

A. Well, when you fill one of these tanks plum full there is a button on the back you can turn it over either side and if you happen to run out one side, you can turn it over and run out of the other side.

Q. After you drained the main tank, didn't you put your finger on that button and drain the reserve tank, too?

A. No, sir.

Q. How do you know?

A. I know I did not, because I did not take but one plug out of the car; you would have to take the two plugs out to drain the car.

The Court: Did you tell them at the time you drained it?

A. I thought it had been drained.

Q. In the operation of the car—

The Court: You mean afterwards you went and talked to somebody to ascertain whether you had drained it?

A. I talked yesterday evening.

Q. And did not know whether you had drained it or not until you talked to this man?

A. No, I did not, thought I drained it at that time, that night.

Q. Did you know you did not drain it? A. I do now.

Q. Do you know you used the gasoline from that reserve tank?

The Court: You may stand aside. I will withdraw the evidence from the jury as to that test made night before last.

Mr. Payne: I move to strike out all of the testimony in regard to the test, on the ground they were all transactions that transpired subsequent to the day of the indictment, and on that ground alone inadmissible.

The Court: If you have any authorities on that, I will hear you.

Mr. Payne: It seems to me—

The Court: If you have any authorities, I will hear you.

Mr. Payne: I can get some in a few minutes.

The Court: I have asked for them several times. You have said that before.

Mr. Payne: The mere fact—

The Court: I don't care to hear you, what you have to say, unless you have some authorities.

Q. Is it not a fact this reserve tank would not operate unless you opened it?

A. Neither one will operate unless you open one.

Q. So your reserve tank is a reserve tank when you have run out of gasoline in a case of emergency when you run out of gasoline, you can use it, connect it up and use it, is that not true? A. Yes, sir.

Q. And it will not run unless you do affirmatively open it?

A. Yes, sir.

The Court: Did you affirmatively open it and use it in coming back?

A. I can show you.

The Court: You know whether or not you did.

A. It was affirmatively opened.

The Court: How could you affirmatively open it, unless you know it was there—unless you knew it was there?

Mr. Green: I have a tank here if you will let him use it.

The Court: No, I am not going to do that. I don't like the attitude of this witness. I will withdraw that, and you can stand aside.

Mr. Green: Your honor, I want to explain——

The Court: Never mind, I withdraw the evidence of this test, and you can stand aside.

(Witness dismissed.)

The Court: I mean I withdraw the evidence as to the test made night before last, and admonish the jury not to consider it. The reason I withdraw it is because the attorneys were wrong and a man who would go out there ought to have enough caution to know if those things were done.

Mr. Payne: Your honor——

The Court: No, I am not asking for an explanation, I am explaining my own mind. I am not asking for anything from the lawyers. Anything further?

Mr. Green: Just let me confer a minute.

Mr. Diggs: If the court please, the defendant rests.

The Court: Now, I will hear you in the morning. If you have any authorities on the motion to strike out that evidence, Mr. Payne.

Mr. Payne: All right.

Mr. Diggs: Your honor——

The Court: Mr. Diggs, you haven't got your exception in to the motion to strike.

Mr. Diggs: I want to ask the court to rule on it.

The Court: You may have a separate exception to each paragraph on your motion to strike that was made the other day, as if each of the motions were made separate, and you may have a separate exception as to each part referred to in your motion.

Mr. Diggs: Very well.

The Court: Gentlemen of the jury, you will be permitted to separate under the usual instructions and admonishment. You may go until tomorrow morning at ten o'clock. I will be here at 9:30 and hear argument, and then I want to talk to the lawyers in the case. The jury may go until ten o'clock tomorrow morning, and then I want the attorneys on each side to have their written instructions ready in the morning on the phases and theory of the law, the theory from each side.

Mr. Diggs: I didn't understand that.

The Court: I want the attorneys to have written instructions ready.

Mr. Diggs: Very well.

The Court: Court will take a recess until 9:30.

(Whereupon court took a recess until 9:30 o'clock a. m. tomorrow morning.)

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#### MORNING SESSION.

April 22nd, 1920, 9:30 A. M.

(Whereupon, Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and present, R. L. Williams, Judge, and counsel for plaintiff and counsel for defendant, and both sides having announced they were ready to proceed the following proceedings were had out of the presence of the jury, the jury having been excused until ten o'clock a. m.)

The Court: I don't know whether the record shows now Kiefer is in Creek county?

Mr. Diggs: Yes, sir.

The Court: Jenks also in Creek county?

Mr. Diggs: Yes, sir.

The Court: Eastern District of Oklahoma, and Drumright?

Mr. Diggs: No question about being in the Eastern District of Oklahoma.

The Court: They say there is no question about the location of Jenks, Kiefer and Drumright being in the Eastern District of Oklahoma, as alleged. Very well, now, gentlemen, we will take up the preliminaries.

Mr. Chambers: Your honor, the only preliminary we have certain suggestions with reference to instructions.

The Court: Pass them up.

Mr. Chambers: I want to apologize for the instructions not being complete in form.

The Court: You should set out the tariffs on each side; you had better set them out.

Mr. Chambers: I can give them to you this afternoon.

Mr. Gann: I understand your honor merely wants to set out the regulations.

The Court: The regulations you contend for.

Mr. Diggs: I understand that the court wanted the special instructions. We have prepared these, if the court please. I am unfamiliar with the practice your honor has adopted. Do you follow the state practice of having them all signed and the words refused?

The Court: There is nothing technical about my instructions. All I want is a fair chance to pass on what you want, and then I give you an exception.

Mr. Diggs: So your honor may be informed of our position, in addition to the special charges as requested—

The Court: I have had cases tried before me and they just bring them up and put them on my desk and I mark each one of them refused and exceptions allowed. All I want is a fair chance to pass on them.

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And the foregoing, together with the appended Exhibits numbered 1, 2, 5 to 9, inclusive, 15, 22 to 25 inclusive, 36 to 42 inclusive, 45 to 47 inclusive, 50, 52 to 57 inclusive, 61, 62, 65, 66, 68, 69, 71, 74, 75, 77, 78, 80, 81 to 95 inclusive, 97 to 103 inclusive, 110 to 115 inclusive, 120, 135 to 140 inclusive, 142 to 152 inclusive, constitute all the evidence given or offered upon the trial of this cause.

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Whereupon on April 22nd, 1920, the following proceedings occurred:

Court met pursuant to adjournment, the Honorable R. L. Williams, Judge, present and presiding, and present, the counsel for both sides, the jury not having been called:

"By Mr. Diggs: I want to say to your honor so you will get our position clearly in your mind in addition to the special instruction when the jury comes in we will ask for a general instruction directing a verdict for the defendant.

"By the Court: Very well.

"By Mr. Diggs: We will also ask that this case be dismissed by the court for the want of jurisdiction arising from the question that it involves a construction of the tariffs as to whether this commodity included within the meaning of gasoline.

"By the Court: Very well. I do not think that question is free from doubt but when I am going to resolve that in favor of the government so that if the jury brings in an adverse verdict you can get a test but I am not sure about that. Those questions were raised in the demurrer and wherever there is ambiguity and the question is ambiguity, that itself is not enough to preclude it from being a criminal case. I am not sure about that.

"By Mr. Diggs: I just mentioned that at this time so your honor may consider it in connection.

"By the Court: Very well. I do not think the court ought to do that when a man's liberty is at stake. I would not do that if it involved a question of imprisonment. I would give my best judgment but these questions have got to be determined.

"The Court: Is there any special thing you want to bring to the attention of the court? I see you have brought some authorities over here.

"Mr. Diggs: I brought some authorities on the assumption the court wanted us to state our position on the question of jurisdiction.

"The Court: That is the same proposition as argued by demurrer?

"Mr. Swacker: No, sir, because the indictments are not so pleaded that we could raise it on demurrer; the railroads did but we could not.

"The Court: Yes.

"Mr. Swacker: And in the way it was pleaded, we could not argue this—

"The Court: You did—they did do it and I did not examine the pleadings, to see whether they should be, but I reached the conclusion the question ought to be definitely passed on by the Supreme Court of the United States, and I overruled the demurrer.

X "Mr. Swacker: The way it is pleaded is that we shipped gasoline and the proof is we shipped casinghead gasoline which it is argued takes the gasoline rate. We think the case ought to be dismissed on the ground of variance, because of the variance between the pleadings and the proof, and the only way this jurisdictional question can be saved is by showing by the proof, because we cannot rely on the pleadings to prove it.

"The Court: What does the variance consist in?

X "Mr. Swacker: The indictment charges we shipped gasoline. The proof is undisputed we shipped casinghead gasoline from which the government argues and contends that casinghead gasoline takes the gasoline rate, and if it had been pleaded that way it would have been demurrable on its face, under the Tie & Timber case, but not having been pleaded that way, the only way this question can be saved is by calling it to your honor's attention now, and asking an instruction on the variance of the testimony. Now, your honor is confronted with the necessity of trying to construe that tariff.

"The Court: Yes—I will not take it away from the jury on that ground. I will give you an exception to that." (S. M. pp. 1315-1318).

Whereupon the jury was called and all were found to be present.

"Mr. Diggs: May it please the court, the defendant now moves the court to dismiss this cause, on the ground



of want of jurisdiction and power of the court to hear and determine the same on the ground and for the reason that it appears from the evidence of the government that a question involving the construction of the articles which are included within the meaning of the tariff is involved.

"The Court: The motion will be overruled.

"Mr. Diggs: Exception" (S. M. p. 1325).

"Comes now the defendant and requests the court to instruct the jury to bring in a verdict in this case of not guilty.

"The Court: The motion is denied.

"Mr. Diggs: Exception (S. M. p. 1325).

"The defendant moves the court to instruct the jury there is a variance in this case, in that it appears from the evidence of the government witnesses that the article shipped by the defendant is casinghead gasoline, whereas the defendant is charged by the indictment, in each and every count thereof, of shipping gasoline.

"The Court: The motion will be denied.

"Mr. Diggs: Exception." (S. M. pp. 1325-1326).

Thereupon MR. PAYNE began summing up for the plaintiff, in the course of which he made the following statements, to which the defendant then and there duly excepted:

Now, coming to the facts in this case, it is the position of the government that the shipments that have been referred to here are gasoline, were gasoline to start off with, they have always been gasoline, and nothing but gasoline. The casinghead gasoline plant of the Gypsy Oil Company at Kiefer was erected in 1913. They started to make gasoline and ship it as gasoline. At that time the rate to Port Arthur was 37 cents per hundred pounds. Ellis, the Traffic Manager of the Gulf Refining Company, sought to get that rate reduced. That is the business of the Traffic Manager, to get the rate as low as possible. Success is measured by the cheapness with which he gets his traffic moved. He wrote to the railroads and asked them to put in a rate of 33 cents on gasoline from Kiefer to Port Arthur. There were some letters that were put in evidence, and I want to read these as I go along so as to make them clear. This was a letter from C. B. Ellis, Traffic Manager of the Gulf Refining Company, Pittsburgh,

Pennsylvania, dated January 15, 1914, addressed to Mr. Powers, Assistant General Freight Agent of the Frisco. Mr. Powers was on the stand.

“Referring to telephone conversation, we want to move ten cars of gasoline from Kiefer to Port Arthur to be handled in our own boats to our eastern distributing stations. I find nothing but a 37 cent rate published from Kiefer to Port Arthur. Will you kindly arrange to publish a 33 cent rate from Kiefer to Port Arthur, this rate being the same as the north-bound rate from Port Arthur to Tulsa, as shown in Leland’s tariff number 39-I. If this movement proves satisfactory I am sure that there will more of it to move. This business would route via the Frisco in connection with the Kansas City Southern or the Frisco in connection with the Houston and Texas Central. I believe that I can induce the Kansas City Southern to participate with you in the 33 cent rate but as you originate the business you no doubt can handle this satisfactory with them. I must hear from you not later than tomorrow.

C. B. ELLIS.”

Then again on January 19th, 1914, Ellis again wrote to Powers, about a thirty-three cent rate on gasoline, that is not worth while reading. Effective April 3rd, 1914, the 33-cent rate on gasoline from Kiefer to Port Arthur became effective and all products from Kiefer to Port Arthur, all products produced at the plant, were shipped as gasoline and billed under that rate. Ellis continued his efforts to get the rate reduced. He asked the railroad companies to put in a very low rate on north bound shipments of naphtha as a transit proposition. The railroads declined to put that in. Then on February 9th, 1915, Ellis tried to get a rate of thirty cents on gasoline. He wrote a joint letter to J. R. Christian, General Freight Agent of the Sunset Central Lines and F. C. Reilly, traffic manager of the Frisco. Mr. Reilly was here on the witness stand. He said:

“This will acknowledge receipt of your letter of January 19th with reference to conversation in St. Louis relative to rates from Port Arthur to Kiefer and Kiefer to Port Arthur, as well as from North Fort Worth to Kiefer and from Kiefer to North Fort Worth. I have gone into this matter from all angles and am going to ask that you arrange for the publication of thirty cents from Port Arthur to Kief-

er and thirty cents from Kiefer to Port Arthur, and 25 cents from North Fort Worth to Kiefer and from Kiefer to North Fort Worth, applying on gasoline and naphtha—[that is naphtha north bound and gasoline south bound.] The present rates are unreasonable to the extent that they exceed the published rate from other producing points where the mileage haul and conditions are similar. Please advise at your earliest possible convenience what action in the premises will be taken. Yours truly,

C. B. ELLIS."

Mr. Reilly replied to that letter on March 18, 1915, stating:

"Referring to your joint letter of February 9th requesting publication of 30 cents on naphtha from Port Arthur to Kiefer, also the same rate in the reverse direction on gasoline. Your application has been given careful consideration and this is to advise that in view of the present conditions, that of our traffic not yielding sufficient revenue to pay the cost of operation and the further fact that we are now endeavoring to increase rather than to reduce rates it will be impractical to establish the rate at this time that you propose. Yours truly,

F. B. REILLY."

Now, gentlemen, that shows repeated and continued efforts to get the rate on gasoline reduced. The traffic was moving as gasoline and up to this time no one had ever heard of this stuff being shipped as unrefined naphtha. We say, having failed to get the rate reduced legitimately, that illegitimate means were used.

Mr. Diggs: If the court please, we object to the statement that illegitimate means were used to get tariffs.

The Court: Read the statement.  
(Record read.)

The Court: Now, the jury remembers the evidence. It is for the jury to determine the evidence. The court will give you the law on the case. On what ground do you object to that?

Mr. Diggs: We object to the use of the words "illegitimate means were used to secure this tariff," because there was no evidence introduced by the government to sustain such an allegation.

Mr. Chambers: There was evidence——

Mr. Payne: I think there was. It is a matter of argument whether there was.

The Court: The jury ought to remember the evidence, and any argument that is made on a point about which there is no evidence to sustain, that is no argument. It is for you to determine that. The court will give you the instructions as to the law.

Mr. Payne: You will be the judges of that, gentlemen, and here is the evidence. On May 16, 1916, Ellis sent a wire to Reilly reading:

"Will you please arrange through the Southwestern Tariff Committee for publication of the seventeen cent rate on crude unfinished naphtha, Port Arthur to Kiefer, and Kiefer to Port Arthur, on the same relative basis as now published in other items?"

Now, gentlemen of the jury I think the evidence in this case clearly shows that no crude unfinished naphtha was produced in Kiefer, and that the application for this low rate on this commodity was with the view and intention of shipping their gasoline and falsely billing it as crude unfinished naphtha or unrefined naphtha. From the—On the said date, Ellis wrote to Reilly stating:

"Confirming my telegram today requesting you to arrange for the publication of the 17 cent rate, applying both north and south bound between Port Arthur and West Port Arthur and Kiefer on the same relative basis as this product is published in item 3022½, supplement 41, Leland Tariff 26" and so forth. "All of our products from Port Arthur and North Fort Worth is an unrefined product and is passed through the refinery at Kiefer and the product secured from this partial refining is an unrefined product and is transported to our Port Arthur refinery and at that point further refined, and we are entitled to the unrefined rate as above outlined."

Now, gentlemen, we say that that statement, that that letter contains false statements not only specifically but in the general impression that it contains. There is a vast amount of evidence in this case which shows that they have no refinery at Kiefer. They have a casinghead gasoline plant. Now, it may be that viewed from a very broad standpoint, you may regard a casinghead plant as a refinery, but no one in the refinery business does and the

railroad men do not. When you say a refinery, you mean just what you say, where the crude oil is put through the still.

I think our evidence also shows that crude naphtha or unrefined naphtha is a product of a refinery made by the distillation of crude oil. And we say that the reference there to the refinery was to lend color to the application for the rate on crude unrefined naphtha, Ellis having in mind that the railroads would understand that crude naphtha or unrefined naphtha was a product that was produced only at a refinery. Based on Ellis' representation, the railroads put in a rate on unrefined naphtha of nineteen and one-half cents from Kiefer to Port Arthur. Now, that rate become effective on December 2, 1916. Now, up until that time the gasoline there produced had always been shipped to Port Arthur as gasoline. It had been shipped everywhere as gasoline. We say it was gasoline.

Now, effective on that date, all the stuff that was shipped to Port Arthur was billed as unrefined naphtha, and it took a rate of nineteen and one-half cents, although theretofore it had moved on a rate not lower than thirty-three cents, and the railroads had refused to reduce the gasoline rate below the thirty-three cent rate. (S. M. 1328 1336.)

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And thereafter MR. GANN summing up for the plaintiff made the following statements, to which the defendant then and there duly excepted:

"Mr. Tabor, the Vice-President of the Company, quoted a list of works of about 150 perhaps, all told on the subject of naphtha, but when it came to the subject of how many of those deal with unrefined naphtha he was crowded back to the conclusion that there was but one man and that he had been quoted by another, and one of those men was the employee or rather came from the Mellon Institute in Pittsburgh. Now what is this Mellon Institute? It is an institution that was founded by the Mellon family of Pittsburgh. Mr. W. L. Mellon is President of the Gulf Oil Corporation.

"By Mr. Diggs: If the court please we except to that as no evidence in the record showing Mr. Mellon's connection with this company. W. L. Mellon as President, the evidence being that the sworn evidence of George S. Davis was president.

"By the Court: Yes.

"By Mr. Gann: He was president of the Gulf Oil Corporation.

"By Mr. Diggs: No evidence connecting him with this case at all.

"By the Court: Yes there is not any evidence here and the jury will not consider it." (S. M. pp. 1391-1392.)

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And thereafter MR. GANN summing up for the complainant made the following statements to which the defendant duly *accepted*:

"Gentlemen of the jury there has been some suggestion here that the government was in control of the railroads part of this time. It is true the government was in control of the railroads and for that reason you would think that a corporation of this kind would refrain from shipping one commodity and billing it as another in order to get a lower rate. You gentlemen know that the government has guaranteed the revenue of the railroads up to October 1, this year and you men and all the general public has to contribute to the operation of these lines."

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And thereafter MR. CHAMBERS summing up for the complainant made the following statements to which the defendant duly *accepted*:

+ | "Another thing I don't understand is that the Gulf Refining Company should not be punished or prosecuted for the violation of the law, first as *said was* by the distinguished counsel and no one more distinguished in the southwestern territory, first because the Gulf Refining Company has assumed that position in the financial affairs of the world that it would not commit a crime, and a violation of the law, and yet the books of our country, the law books of our country and the distinction of our courts in our country are full of the prosecutions against corporations and I will not say vigorous, but just as the corporation for the violations of the law and I don't see why they should not—why that should be any reason they should not be prosecuted. Another reason he gave as to why the Gulf Refining Company could not be prosecuted in this case is that they were liable that they ought to refund any civil action. They are financially able to refund and pay a judgment in a civil action and therefore although they have violated the law, we should, the government should

the government and the people of the United States should not prosecute them criminally for the violation of that law but the government of the United States should treat them so nice on account of their financial condition they should bring a civil action against them and further violaters of the law let them go unpunished and merely require them to give back what they have taken from the United States. The opposite of that would be if some poor man like you or myself—I was going to say some poor devil like the—should violate laws of the country and was unable financially to respond in damages, then he should be incarcerated in the penitentiary for the violations of the law. But these people, because of their financial position should not be prosecuted. I am not overstating it, gentlemen of the jury, I am stating it just exactly as he state that because a civil action would lie, because they can respond to a civil action but we poor insignificant prosecutors of the government should bring a civil action and let them go free although they violated the law, while if you or I should violate the law and their man should feel and is able to pay it back so we prosecute him, if a man should steal and is unable to pay it back, prosecute him to the full extent of the law.

\* \* \* \* \*

Gentlemen of the jury, there is this in this case, if the commodity which they shipped and transported under the instructions which will be given to you by the court in your judgment, after hearing all of the evidence, is gasoline, then by reason of there being another name for it, they violated the laws, they placed the other shippers in a position where they were not able to compete with them; they placed in their own pockets hundreds of thousands of dollars of which they were not entitled to and which the people of the United States have got to bear the burdens and it is true that the Gulf Refining Company will have to join, thank goodness, the other people of the United States to pay these things if it had to be paid.

\* \* \* \* \*

X The purpose to ship a dangerous commodity by representing it as an undangerous commodity, getting it shipped at a rate an undangerous commodity would be shipped at when as a matter of fact you know and I know under those tariffs and rules and regulations of the Interstate Commerce Commission that the rates upon dangerous articles must be properly tagged, and the rate would be higher. Now the commodity that was shipped from



Carterco had no casinghead gasoline in it, the commodity that was shipped from Muskogee to Baton Rouge, had not casinghead gasoline in it. It was not a dangerous article. It was not an article that had to be shipped under the rules and regulations regulating dangerous commodities. It was in one instance it was described as crude, unfinished naphtha and in the other instance it was described as unrefined naphtha and it was a first cut from the refinery of the refined crude oil.

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Whereupon on April 23, 1920, court reconvened pursuant to recess heretofore taken and the jury having been called by the clerk and all found to be present the following proceedings were had, to-wit:

By Mr. Chambers: Gentlemen of the jury:—

By the Court: Wait a minute, now gentlemen of the jury the defendant makes the following exception; the defendant excepts to the comment of the government's counsel Gann and Chambers suggesting that the United States government pecuniary affected by the manner of the consideration, the defendant not being on trial on charge of defrauding the United States and also except to the comment of government counsel Chambers upon the wealth of the defendant; such comment to the jury being highly improper and calculated *and* inflame and defendant moves the court to instruct the jury to especially disregard such remarks. And defendant also excepts to the statement of Mr. Chambers to the jury charging the defendant had violated the safe transportation rules, such charge being contrary to the fact and admission of the government, and calculated to inflame; and defendant moves the court to especially instruct the jury regarding it. Now yesterday, both sides on these points, to my mind went outside of the proper domain, as there was no objection I permitted them to do that. One side charged in the argument that the railroad a part of the time when the railroad under the war, under the Federal Control. Then the statement was made about what the result would be affecting members of the jury. Everything else, that has got nothing to do with the case. Then the other side said how it affect their clients, how they could be made to refund in civil damages. So I admonish you to try the case according to the evidence. Hear the arguments of the attorneys, and when they are sound, if they are sound that is for you to determine about that. If they do not, confine

themselves to the evidence in the case that is for you to determine about that. The case is to be tried without fear or favor. Without any regard as to how it affects people but solely with a view of the weight of evidence as to be determined by the jury and as to the law to be given you. The exception was made on the reconvening of court and after the argument had been made the previous day but before the arguments were finally concluded.

Mr. Swacker: We ask a special instruction regarding the safe transportation matter also.

By the Court: That goes to the jury for them to consider in whatever light of all the evidence in this case.

By Mr. Swacker: I don't think your honor recalls there was an admission by the gentlemen that there was no such violation and Mr. Gann made the admission.

By the Court: The jury are to determine what the admissions were and all the facts and whatever they are and they consider them in all the light of all the evidence in this case.

By Mr. Swacker: May we have an exception?

By the Court: To what?

By Mr. Swacker: The record shows Mr. Gann admitted the safety transportation rules were not violated.

By the Court: The jury knows what that is and they will make their finding according to the statements in evidence in the case and not according to the argument of either side when that argument is not confined to the admissions of the case. Proceed now:"

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And thereafter MR. CHAMBERS summing up for the plaintiff made the following statements, to which the defendant duly excepted:

"Mr. Chambers: \* \* \* Now gentlemen of the jury it was the books and records of the office and it was the books and records of the office of the Gulf Refining Company that was brought to the grand jury for their investigation. I do know whether it was a minor official, I do not know whether they had any authority or not. I know there was under the evidence one purpose in doing it and that purpose was to conceal from the people who inspected that book the fact that they themselves recognized and that it throughout these years was gasoline. We will say it was a minor official that did that; if that sort of a con-

dension to them and they think the mutilation of the records was being done by some minor official would release them that a minor official should attempt to protect the Gulf Refining Company is a mystery to me. And the evidence of the mutilation of the records before this jury that went before the grand jury and those records were brought to that grand jury by the highest official in the Gulf Refining Company and the Gulf Refining Company and the Gulf Refining Company of Pittsburgh and from Port Arthur and that is the evidence where they cut off the name of Kiefer gasoline, it was left off of that copy or their duplicate by the men that brought this record from Pittsburgh. The highest official, I do not remember his name, I don't remember whether it was Mr. Taber here with you all or not but the highest official who brought that to the grand jury at Muskogee and presented it to them knew that those records had been mutilated. He knew Kiefer gasoline had been cut off of that top and had he *forgot*ted that in the grand jury and was honest and not attempting to conceal when he was not attempting to do anything wrong he would have come before the grand jury and said, gentlemen of the grand jury here is the record, it has been mutilated without our consent, we want to call your attention to the mutilation; we want to show you why it is or what it was that cut off of this mutilated record that was not a minor official; that was not a low employee; that was one of the highest officers that came with those records from Pittsburgh to Muskogee.

"By Mr. Swacker: We desire to except to the statement of what transpired at Muskogee; no such evidence in this case.

"By the Court: They will not consider what transpired before the grand jury, the evidence was that they brought them here and they were turned over to the grand jury investigation before it began, from the evidence, but the jury are to determine. The Court is not required to remember all the evidence. That is for the jury to remember the evidence. I will give you this special instruction. Gentlemen of the jury you are to try this case solely on the evidence and the admissions as made by either side and placed in the record as permitted by the court. Such evidence or admissions to be remembered by the jury, the statements of counsel in argument not borne out by the evidence, the statements of counsel on either side, not on any particular side, but on either side, not borne out by the evidence or admissions are not to be considered as evidence by the jury. Go ahead.

"By Mr. Chambers: I am sorry I was wrong. I admit I was wrong, the force and effect of everything that was as I said it. If they turned those records over to the government for the purpose of being used before the grand jury it was their duty just as much to tell the government and the officers of the government, if they were not trying to conceal a fact, it was just as much their duty to tell those officers as to tell any court or anybody else those records had been mutilated and that they didn't know it, and they should call their attention to that fact. Knowingly placing before the government evidence that was not what they showed that they were attempting to conceal a material fact in the controversy in this case." (S. M. pp. 1467-1470).

"By the Court: Gentlemen of the jury before I begin the charge I will read to you what I said this morning. Now on yesterday both sides on these points to my mind travelled outside of the domain of proper argument. I permitted them to do this, no objection being made by either side at the time. One side suggested in the argument that the railroads a part of the time were under Federal control being in the hands of the Director General; in another statement that was made that the result of the verdict might affect the interest of the taxpayers including the interests of the jurors or in substance that. Then on the part of the defendant it was averted to the fact that the defendant could be made to refund in a civil suit. The jury are admonished that the case is to be tried according to the evidence and the admissions in the case. The jury are to hear the arguments of the attorneys and when they consider the argument sound as relating to prove facts from the evidence admitted in the case and admissions in open court before the jury, that is for them to determine. If the attorneys do not confine themselves to the evidence and admitted facts in the case the jury should disregard such argument. The case is to be tried without fear or favor, and without prejudice and without any regard to pecuniary affect anyone, but solely with a view of justice. As regards to the safety appliances it is my understanding there is no contention of any violation of the same by the defendant in observing regulations prescribed as precautions to safety. That is for the purpose of reading that in the record and is an admonition to the jury." (S.M. pp. 1486-1487).

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## CHARGE OF THE COURT

The Gulf Refining Company, as defendant, is charged by indictment in counts number 1 to 100 inclusive, with the exception of count No. 44, which has been dismissed and had been withdrawn from the consideration of the jury, the defendant in this indictment is charged with being a corporation organized and existing under the laws of Texas and engaged in the business of selling gasoline and other petroleum products with its place of business at West Port Arthur, in the State of Texas. (All of which for the purposes of this case has been admitted). It is further charged "that the Gypsy Oil Company during the period covered by the indictment was a corporation, organized under the laws of the State of Oklahoma and engaged in the business of producing gasoline at the places of Kiefer, Jenks, and Drumright, in the State of Oklahoma, and the shipping of said gasoline from said points to various points and places in other states and particularly to the said Gulf Refining Company, in tank cars, and consigned to it at West Port Arthur, in the State of Texas. That the Gypsy Oil Company during said period was a corporation existing under the laws of Oklahoma for the purpose of this case has been admitted. It is further charged that through the period covered by the indictment, to-wit: From on or about the 1st of December, 1916, to and including the first day of March, 1917, I believe the jury will be permitted to take this indictment with them to the jury room, that the St. Louis-San Francisco Railway Company was a corporation organized and existing under the laws of the State of Missouri, and was a common carrier engaged in the transportation of property in interstate commerce, wholly by railroad, for hire, and operated a railroad line which connected with the railway line of the Kansas City Southern Railway Company, and that during said period the Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri and a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, and operated a railway line which connected with the railway line operated by the Texarkana & Ft. Smith Railway; that said Texarkana & Ft. Smith Railway Company during such period was a corporation organized and existing under the laws of the State of Texas and was a common carrier engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, that throughout said period the three common carriers aforesaid, having theretofore established, maintained and operated a through railway route for continuous transportation of property, wholly by railroad,

for hire, from Kiefer, Oklahoma, in the Eastern District of Oklahoma, and within the jurisdiction of this Court, to Port Arthur and West Port Arthur, Texas, and all of said respecting connecting railway lines were engaged in the transportation of property, including transportation of gasoline, for hire, over said railway routes and were subject to the provisions of the Acts of Congress approved February 4th, 1887, entitled "An Act to regulate Commerce," and Acts of Congress amendatory thereof and supplementary thereto.

The further allegation is that between December the 28th, 1917, and prior thereto, the Atchison, Topeka & Santa Fe Railway Company, a corporation existing under the laws of the State of Kansas, the Gulf, Colorado & Santa Fe Railway Company, a corporation existing under the laws of the State of Texas, and the said Texarkana & Fort Smith Railway Company were common carriers operating a through railway line and route for the continuous transportation of property, in interstate commerce, wholly by railroad, for hire, from a point on the line of railway of the said The Atchison, Topeka & Santa Fe Railway, to-wit: Drumright, to certain points on the line of the said Texarkana & Fort Smith Railway Company to-wit: said Port Arthur and West Port Arthur, both in the State of Texas, and were engaged in the transportation of property, in interstate commerce, wholly by railroad, for hire, over said through railway line and route from said Drumright to said Port Arthur and West Port Arthur and were subject to the Act of Congress approved February 4th, 1887, entitled "An Act to regulate commerce" and to the acts of Congress amendatory thereof and supplementary thereto; and there is an allegation as to the interstate route of the Midland Valley, the Kansas City Southern and Texarkana & Ft. Smith Railroad Company constituted an interstate line and being an interstate carrier in the words substantially the same as heretofore referred to. It is admitted that all of said railroads were corporations organized and existing as alleged in the indictment, admitted for the purposes of this case, and that the said Gulf Refining Company and the said Gypsy Oil Company each were corporations existing and organized as alleged in the indictment. These admissions are solely for the purpose of this case.

Counts from 1 to 15 inclusive relate to alleged concessions as to shipments from Kiefer, Oklahoma over the St. Louis & San Francisco Railway Company, Kansas City Southern, Texarkana & Fort Smith Railway Companies.

Counts from 16 to 35 inclusive, relate to alleged concessions as to shipments from Kiefer, Oklahoma, over the Mid-



land Valley, Kansas City Southern, and Texarkana & Fort Smith Railway Companies.

Counts from 36 to 40 inclusive, relate to alleged concessions whereby on account of such concessions a discrimination was practiced on account of said shipments from Kiefer, Oklahoma, over the Midland Valley, Kansas City Southern and Texarkana & Fort Smith Railway Companies.

Counts from 41 to 64, inclusive, with the exception of Count 44 which, having been dismissed, is excluded from your consideration, relate to alleged concessions on shipments from Jenks, Oklahoma, over the Midland Valley, Kansas City Southern, Texarkana & Fort Smith Railway Companies.

Counts from 65 to 80, inclusive, relate to alleged concessions on shipments from Jenks, Oklahoma over the Midland Valley, Kansas City Southern and Texarkana & Fort Smith Railway Companies.

Counts from 81 to 85, inclusive relate to alleged concessions and on account of such concessions it is alleged that discriminations were practiced, as to shipments from Jenks, Oklahoma, over the Midland Valley, Kansas City Southern and Texarkana & Fort Smith railway companies.

Counts from 86 to 100, inclusive, relate to alleged concessions as to shipments from Drumright, Oklahoma, over the Atchison, Topeka & Santa Fe, Gulf Colorado & Santa Fe and Texarkana & Fort Smith Railway Companies. The alleged shipments between said points were consigned by the Gypsy Oil Company to the defendant, the Gulf Refining Company.

The allegation is that throughout the period covering all of said shipments that there were established according to the acts of congress joint rates and charges for the transportation of certain properties, to-wit: gasoline in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges which said schedules and tariffs of rates and charges, throughout said period showed the joint rate on each of said routes herein referred to for the transportation of gasoline in tank cars between said points over said four routes, to-wit: (1) over the St. Louis, San Francisco Railway Company, Kansas City Southern and Texarkana & Fort Smith Railway Companies between Kiefer, Oklahoma, and Port Arthur and West Port Arthur, Texas, herein referred to as route number one) and over the Midland Valley Railway Co., Kansas City Southern Railway Co. and Texarkana & Fort Smith Railway



Company between the same places and herein referred to as route number two, and over the Midland Valley Railroad Co., Kansas City Southern Railway, and Texarkana & Fort Smith Railway Company between the points of Jenks, Oklahoma, and Port Arthur, Texas, herein referred to as route number three; and over the Atchison, Topeka & Santa Fe, Gulf, Colorado & Santa Fe Railroad and Texarkana & Fort Smith Railway Company between the points of Drumright, Oklahoma, and West Port Arthur, and Port Arthur, Texas, and herein referred to as route number four. The rate for the transportation of gasoline in tank cars, the rate on gasoline as shown by the tariff sheets introduced in evidence from December 2, 1916, to June 24, 1918, from Kiefer, Oklahoma, to West Port Arthur, Routes 1 and 2, was 33 cents. From Jenks, Oklahoma, to West Port Arthur, Texas, over the route alleged in the indictment, and which is designated here as route No. 3 was 39 cents; and from Drumright, Oklahoma, to West Port Arthur, Texas, over the route as alleged in the indictment which is the route herein referred to in these instructions as route No. 4, was 40 cents. From June 25, 1918, to July 28, 1918, over said route between said Kiefer and West Port Arthur 41- $\frac{1}{2}$  cents; and over said route between Jenks, Oklahoma, and West Port Arthur, Texas, 49 cents; and over said route between Drumright, Oklahoma, and West Port Arthur, Texas, 50 cents, of course this means fifty cents per hundred weight. From July 28, 1918, to May 31, 1919, over said route between Kiefer, Oklahoma, and West Port Arthur, Texas, 37- $\frac{1}{2}$  cents; and over said route between Jenks, Oklahoma, and West Port Arthur, Texas, 43- $\frac{1}{2}$  cents; and between Drumright, Oklahoma, and West Port Arthur, Texas, over said route 44- $\frac{1}{2}$  cents.

Now as to unrefined naphtha the rate from December 2, 1916, to February 2, 1917, over said route between Kiefer, Oklahoma, and Port Arthur, Texas, 19- $\frac{1}{2}$  cents; from February 3, 1917, to May 1, 1917, from Kiefer, Oklahoma to Port Arthur, Texas, over said route 19- $\frac{1}{2}$  cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 19- $\frac{1}{2}$  cents; from Drumright, Oklahoma, to Port Arthur, Texas, over said route 20- $\frac{1}{2}$  cents; from June 25, 1918, to July 28, 1918, from Kiefer, Oklahoma, to Port Arthur, Texas, over said route 24- $\frac{1}{2}$  cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 24- $\frac{1}{2}$  cents; from Drumright, Oklahoma, to Port Arthur Texas, over said route 25- $\frac{1}{2}$  cents; from July 29, 1918, to May 31, 1919, from Kiefer, Oklahoma, to Port Arthur, Texas, over said route 24 cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 24 cents; and from Drumright, Oklahoma, to Port Arthur, Texas, over said route 25 cents.

Now I will give you some of the allegations of the first count in the indictment so that you may get in your mind the specific charge in this case; the allegation is that the rate for the transportation of gasoline in substance in tank cars over the route which I believe bears route number 1 over the Frisco as the initial carrier, then connecting with the Kansas City Southern and the Texarkana & Fort Smith Railway, to points of destination in Texas, then these are interstate shipments; an interstate shipment is a shipment by an interstate carrier running through more than one state; a shipment over interstate railroads, interstate carriers from points in Oklahoma to points in Texas is an interstate shipment and such shipment are subject to regulations, Federal regulations as to commerce between the states. The allegation here is that the tariff rate on gasoline was 33 cents for each one hundred pounds,—the rate for the transportation of gasoline in tank cars over said route was alleged to be 33 cents and that such cars billed and shipped and consigned by the consignor and delivered at the point of destination and then and there with the delivery there became due the freight at that time, at the rate of 33 cents per hundred in accordance with the lawful fixed rate, but the charge is, now, in the indictment that a concession in respect to the transportation of said property in interstate commerce of  $13\frac{1}{2}$  cents of the said freight rate upon each one hundred pounds of the property so transported by the aforesaid common carrier whereby such property was transported from said initial point in Oklahoma to said destination point, which was West Port Arthur, Texas, over said route at the rate and charge of  $19\frac{1}{2}$  cents for each one hundred pounds thereof, which was  $13\frac{1}{2}$  cents less for each one hundred pounds thereof of the rate named in the tariffs and schedules published and filed as required by law and in force at the time upon said route, which said concession so accepted and received by the said defendant from the said carriers amounted to the specific amount designated in each count, so now the charge in all of these indictments except I believe from 36 to 40 and 81 to 85 are charged as straight concession, the concessions consisting in the accepting and receiving of the concessions from the carrier of a less rate than that prescribed in the tariff and accepting and paying this rate, when in fact they are alleged to be due the higher rate. Now in these other indictments from 36 to 40 and from 81 to 85 they are charged there substantially the same except the allegation is that a concession was practiced and that accepting the concession whereby—a discrimination was practiced and that the concession was received and accepted whereby a discrimination was practiced against the defendant's competitor, I believe the Texas Oil Company.

Now I believe I have stated to you that in all the indictments except from 31 to 40 and 81 to 85 that the allegation is as to the receiving and accepting the concessions and I have defined the allegations and as to the other indictments the charge is that they received or accepted the concession whereby a discrimination was practiced as against the named competitor. Now you will be permitted to take the indictment to the jury room. I refer to this merely to get the issues in your minds, to aid you in the expeditious determination of the case, but it will be your duty to examine these counts and determine specifically the issues as submitted to you.

Now in each count the allegation as to the number of the cars, the capacity and weight of each car and amount of freight due and amount paid is distinct and separate as to each indictment. It is admitted for the purpose of this case that the cars mentioned in each indictment was shipped by the Gypsy Oil Company to the Gulf Refining Company at the time and place and over the lines mentioned in each count of the indictment and evidence was offered by the government as to the capacity of the cars and it was admitted for the purposes of this case that the freight was paid by the defendant as alleged. You are instructed that the only offense with which the defendant is charged is in having caused to be shipped to it and received by it gasoline at a rate less than the legal rate established for gasoline, and unless you find from the evidence beyond a reasonable doubt—just before that, less than the legal rate, established for gasoline in such manner and under such circumstances as heretofore pointed out to you amount to a charge for a concession or a concession whereby discrimination was practiced against a competitor, is alleged.

And unless you find from the evidence beyond a reasonable doubt that the commodity so shipped and so received by the defendant was gasoline, it is your duty to find the defendant not guilty, although you might believe from the evidence that the commodity shipped and received by the defendant was not unrefined naphtha but was a commodity which should have been shipped under another name than that of unrefined naphtha and should have borne a rate higher than that lawfully published and filed for that of unrefined naphtha.

The defendant, a corporation, enters upon this trial with the same presumption of innocence in its favor as if it were an individual. That presumption is that all defendants charged with a criminal offense under our system of government enter upon the trial with the presumption of innocence in their favor and that presumption of innocence remains in their favor until it is overcome by evidence. The indictment return-

ed by the Grand Jury is no evidence of the guilt of the defendant. It is merely the means afforded by which the charge is framed for the trial before the court and jury.

Before you will be authorized to convict this defendant you must believe it guilty, as charged, from the evidence beyond a reasonable doubt. A reasonable doubt is not a mere possibility of doubt, because everything relating to human affairs and depending on human evidence is open to some possible or imaginary doubt. It is that state of the case which after an entire comparison and consideration of all the evidence leaves the minds of the jury in that condition that you cannot say you feel an abiding conviction of the truth of the charge; such an abiding conviction as you would be willing to act upon in the more weighty and important matters relating to your own affairs. It is an honest, substantial misgiving generated by the insufficiency of the proof; it is such a doubt as naturally flows from a consideration of all the evidence, such a doubt as an honest, reasonable and careful man would entertain after a careful investigation and consideration of all the evidence; not a speculative doubt, or a vague conjecture, or possibility of the innocence of the accused. It is only necessary that you should have that certainty with which you transact your own most important concerns in life, and if you have that certainty, then you are convinced beyond a reasonable doubt.

All of the evidence introduced by both sides should be permitted to stand if you can reasonably reach such a conclusion, but if there is an irreconcilable conflict, then it becomes your duty to weigh the evidence with a view of determining what part you will believe and accept, and what part you disbelieve and reject as a result of the irreconcilable conflict in the evidence after a reasonable consideration of it, if you then find there is such an irreconcilable conflict. The jury are the exclusive judges of the credibility of the witnesses and the weight or value of their evidence. You see the witnesses as they take the witness stand; their demeanor, their appearance and manner; their intelligence or want of intelligence, candor or want of candor; opportunity to know what they testify to, and the reasonableness of their testimony; interest or want of interest in the result of the trial of the case; their unreasonable zeal if such is shown; inducement, if any; corroboration, if any; contradiction, if any, either by physical facts, contradictory statements or any character of evidence in the case.

Now in addition to that I will give you the rule as applying to expert evidence. That rule applies in a measure also to non-expert evidence, because the facts have to be proved upon which expert evidence operates. You prove the facts, lay the

predicate, and the facts in the case, what is being considered before the jury, and then experts are permitted then to express their opinions and give their reasons therefor to aid the jury in the final determination of the facts on the issues submitted to them.

The probative force, the judgment, the value, the opinion of expert evidence is for the jury. The probative force of the reason of such witnesses is a question of fact for the jurors; the ultimate decision of the belief carrying quality of the judgment of an expert is for the jury. The credibility of witnesses and the weight or value of the evidence is peculiarly within the province of the jury. No eminence and skill on the part of a witness divest the jury of this power and the consequent responsibility for its exercise even on the precise point covered by the judgment of the expert. The ultimate judgment of the jury as to every fact is the province of every litigant to insist upon under our system of government for jury trials. Within the limits prescribed by reason the evidence of the expert is not conclusive on the jury; where they regard the judgment as unreasonable they may decline to follow it. The jury system has brought to the administration of justice during its long past an element of common sense and reason which, in judging of the ordinary conduct of men, especially in criminal cases, is of the utmost value. Now as to things within the common ordinary experience of men there is the automatic reasoning for the jury, you might say, but things that are not within the common ordinary experience of men, experts are permitted on the hypothetical case which is presented before the jury within their domain of peculiar qualifications to express their opinion and give their reason therefor.

However intricate the subject upon which the expert testified, the jury must estimate the credibility of the witnesses, the reasonableness of their respective contentions, if there are contentions, the soundness of the different arguments by which they are supported. In judging of the weight of the evidence furnished by the inference, conclusion, or judgment of the witnesses, skilled or unskilled, the jury are governed in their freedom of action only by the requirement that they must employ reason in the matter. So here is an important case; you hear all the evidence, you consider all the evidence, and when I mean evidence I mean also all the admissions made by either side and placed in the record by the permission of the court, or admitted in the presence of the jury by the litigants on either side, you consider that, and then you consider the evidence of these experts, their reasons, you weigh them carefully, and then the ultimate responsibility is on you to give your best reason and your best thoughts and your best care

in determining the ultimate fact as to the guilt or innocence of the accused before you.

Before I proceed further I will read the part of the statute which is applicable to this case. That part of what is known as the Elkins Act, being an Act entitled: "An Act to further regulate commerce with foreign nations and among the States"—a part of that Act I will read to you, which is as follows:

"It shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit"—(here is the part applicable to this case) "accept, or receive any rebates, concession, or discrimination, in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariff published and filed by such carrier as is required by said act to regulate commerce and acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced."

Now certain regulations were admitted in evidence for the convenience of the jury just as I have had compiled for you these rates I have read to you. I will read you these regulations. Regulations for the safe transportation of dangerous articles other than explosives have been introduced in evidence, including Western Classifications, Nos. 55—whatever numbers they are—December 2, 1916, to September 1, 1918, have been introduced in evidence from which I quote as follows:

"(k) Liquid condensates from natural gas or from casinghead gas of petroleum oil wells whose vapor tension at 100° F. (90° F. November 1 to March 1) exceeds ten pounds per square inch, must be described as liquefied petroleum gas. In measuring the vapor tension the container of the sample may be vented momentarily at a temperature of 70° F. This product must be shipped in metal drums or barrels which comply with specifications No. 5, I believe, and have a nominal capacity not exceeding 55 gallons; or in special insulated tank cars approved for this service by the Master Car Builders' Association, provided the vapor tension as above defined does not exceed 15 pounds per square inch from April 1 to October 1, and 20 pounds per square inch from October 1 to April 1, I believe it is April 1. When the vapor tension as above defined exceeds 25 pounds per square inch, cylinders as prescribed for compressed gases must be used. If you desire—they were introduced in evidence—and you may examine them yourself.



When the condensate, blended or unblended with other products, has a vapor tension as above defined not exceeding 10 pounds per square inch, and is shipped as 'gasoline' in an ordinary tank car—I believe gasoline is in quotation marks gentlemen—an ordinary tank car, 60 pound test class, defined in Master Car Builders' Association specifications for tank cars, the safety valves of such a car must be set to operate at 25 pounds per square inch, with a tolerance of 1 pound above or below and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or 'casinghead gas' is produced and shipped in a blended or unblended state; and the requirement for the construction of dome covers and valve setting at 25 pounds must be made effective not later than July 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than '20° F.'

When the 'blowing' of safety valves of a car containing inflammable liquids is noted any available means for cooling the car shell and contents, such as spraying with water, should be utilized; and if practicable the car should be moved to an isolated point, to minimize the fire risk. Covering the safety valves with wet cloth, wet blankets, or wet gunny sacks will decrease the danger of igniting vapors escaping from a 'blowing' valve. The burning of these vapors at the safety valve is not liable to cause an explosion. The valves are designed to permit, in emergencies, the burning in this way of the entire contents of the car.

#### WESTERN CLASSIFICATION NO. 55 Sup. 5.

(k) Liquid condensates from natural gas or from casinghead gas of oil wells, made either by the compression or absorption process, alone or blended with other petroleum products, must be described as liquefied petroleum gas when the vapor pressure at 100° F. (90° F. November 1 to March 1) exceeds 10 pounds per square inch.



When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding ten pounds per square inch, it must be described and shipped as gasoline, casinghead gasoline, or casinghead naphtha.

Liquefied petroleum gas of vapor pressure exceeding 10 pounds per square inch and not exceeding 15 pounds per square inch, from April 1, to October 1, and 20 pounds per square inch from October 1, to April 1, must be shipped in metal drums or barrels which comply with shipping container specification No. 5; or in special insulated tank cars approved for this service by the Master Car Builders' Association.

Liquefied petroleum gas of vapor pressure exceeding 15 or 20 pounds per square inch as provided herein, and not exceeding 25 pounds per square inch, must be shipped only in metal drums or barrels which comply with shipping container specification No. 5.

Liquefied petroleum gas of vapor pressure exceeding 25 pounds per square inch must be shipped in cylinders as prescribed for compressed gases. \* \* \*

When the liquid condensate, alone or blended with other petroleum products has a vapor pressure not exceeding 10 pounds per square inch it must be described as gasoline or casinghead gasoline or casinghead naphtha and must be shipped in metal drums or barrels complying with specification No. 5; or in ordinary tank cars, 60-pound test class, equipped with mechanical arrangement for closing of dome covers as specified in Master Car Builders specifications for tank cars.

Every tank car containing liquid condensates, either blended or unblended, including liquefied petroleum gas, as defined herein, must have safety valves set to operate at 25 pounds per square inch with a tolerance of 3 pounds above or below, and the mechanical arrangements for closing the dome covers of such cars must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure; or suitable vents that will be opened automatically by starting the operations of removing the dome cover must be provided.

The shipper must attach securely and conspicuously to the dome and dome cover three special white dome placards measuring four by ten inches, bearing the following wording: "My recollection is that the undisputed evidence shows that these placards were attached and worded as required by law.

**"CAUTION.****AVOID ACCIDENTS**

**DO NOT REMOVE THIS DOME COVER  
WHILE GAS PRESSURE EXISTS IN TANK.  
KEEP LIGHTED LANTERNS AWAY.**

One placard must be attached to each side of the dome and one placard must be attached to the dome cover. The presence of these special dome placards must be noted on the shipping order by the shipper and by the carrier on the billing accompanying the car. Placards must conform to samples furnished by the Chief Inspector of the Bureau of Explosives." (And it is my recollection of the evidence that these notations were made on the billing. The jury will remember that, however.)

You may also look to the manner in which these regulations were complied with by the defendant if same were complied with in any respect as to these shipments and consider the conduct of the defendant its agents and employees within the scope of their duties relative as to such requirements pertaining to these shipments and to all the circumstances relative thereto as shown by the evidence in this case. And then you may look to these regulations that are promulgated under agencies inaugurated by the Federal government as to what these commodities, or any of them, are called, or directed to be called in such regulations, if you find such there; that is for you to carefully consider these regulations in connection with all the evidence in the case to see what aid or assistance it may give you in the final determination of this case.

You are further instructed that regardless of what your conclusion may be as to what the material shipped actually was or as to what the proper name thereof was, you must find the defendant not guilty unless you believe beyond a reasonable doubt that the defendant acting reasonably did not believe that it could properly be described as unrefined naphtha, and so described it with the design and purpose of securing a concession or a concession whereby a discrimination was practiced with respect to its transportation. In such determination do you find that the commodity was gasoline and that that was an appropriate or a proper designation for it and did the defendant reasonably have such information or knowledge relative thereto? If so could it then reasonably believe that unrefined naphtha was a proper or appropriate designation? As to these matters you make your determination or finding from all the evidence in the case.

X You are further instructed that every concession or concession whereby a discrimination is practiced is unlawful, but for any such concession or concessions whereby a discrimination is practiced to be subject to criminal prosecution in order to constitute a misdemeanor or other grades of crime the concession, or concession whereby a discrimination is practiced, must be knowingly granted, made, accepted or received; that is, that the thing granted, accepted or received must at the time of granting, accepting or receiving the same have been known to have been a concession or a concession whereby a discrimination was practiced and have been granted, accepted or received as such. It is the granting, receiving or accepting of the same with such knowledge that the law defines and punishes as a crime. But every individual, every being, and this is a being in law, the defendant, a corporation, is a being, a legal being, it acts through its agents and its employees within the scope of their authority. Now you have heard all the evidence. Do you believe that the defendant being acting through its agents employees within the scope of their authority had the knowledge as to what they were doing when they received this commodity at its point of destination at the rate of freight as shown; did they have the knowledge, did they know? If so, what was the purpose if they accepted or received it. Do you find from the evidence that they had the knowledge, that from their knowledge, if you find first beyond a reasonable doubt it was gasoline; if you find beyond a reasonable doubt that it was gasoline, then do you find beyond a reasonable doubt that it, through its employees and agents within the scope of their authority had knowledge as to these things. It is a rule of construction that every being is chargeable with the consequences of his acts when he has knowledge of those acts.

In order to find the defendant guilty it is not sufficient that you believe beyond a reasonable doubt that the commodity shipped was "not unrefined naphtha"—I repeat that—It is not sufficient that you believe beyond a reasonable doubt that the commodity shipped was "not unrefined naphtha," but you must further believe from the evidence beyond a reasonable doubt that such commodity is as charged in the indictment, "that is, it was gasoline." In other words, it is not sufficient for you to believe from the evidence beyond a reasonable doubt that the commodity charged in the indictment to have been shipped could not have been appropriately or properly designated as "unrefined naphtha," but you must also believe from the evidence beyond a reasonable doubt that the commodity described in the indictment was gasoline."

Section 1712 of the regulations for the transportation of dangerous articles other than explosives, by freight, as prescribed by the Interstate Commerce Commission, which is in evidence, provides that all shipments of all articles subject to such regulations offered for transportation in Interstate Commerce must be properly described by the shipper in his shipping provided for the description of such freight carriers' classification and tariff governing. And further, it is the duty of the shipper in shipping its commodity to comply with that section of the regulations. Now it was the duty of this carrier in billing it to bill it by the proper name. Then when it is billed, it is the duty of the carrier to apply the freight rate. Now you look at all of the evidence, at the conduct of everybody in this case.

Now gentlemen going back. We have the shipment and you have the delivery at the point of destination; you have the conduct of all the parties; look at all the conduct, look at everything that is favorable to the defendant; that is your duty to do that, and then consider everything that is against them both. If there is a circumstance that stands equal, a presumption against them and a presumption for them, you should resolve it in their favor; but as reasonable men you weigh this evidence under the law of reason.

If you find beyond a reasonable doubt that the defendant had a purpose to do an act forbidden by or in violation of a statute and that in doing so, as a reasonable person, it had knowledge that the commodity shipped was gasoline and that it should not be designated as unrefined naphtha. If you believe all this beyond a reasonable doubt you should convict the defendant. You don't have to go into this character of cases to find the degree of moral turpitude that would constitute grand larceny, but if you find that there was the purpose, and you find beyond a reasonable doubt, to do an act forbidden by act of Congress, or in violation of a Federal statute, or a Federal regulation that had the force of law, and that in doing so through its officers and employees within the scope of their authority as reasonable beings, it had the knowledge that the commodity shipped was gasoline and that it should not be designated as unrefined naphtha, and you find all these things beyond a reasonable doubt, then in my opinion the government's case would be made out. But now if you don't find all these elements beyond a reasonable doubt the government's case is not made out.

In order to find the defendant guilty as charged in the indictment you must find from the evidence beyond a reason-

able doubt that the defendant procured the commodity named in the indictment to be transported over the routes named in the indictment with the knowledge that it was to be transported at a rate less than that lawfully published and filed rate fixed for such commodity with the intention of knowingly receiving a concession, which intention continued until such concession was accepted or received. Evidence has been introduced as to certain erasures or changes or alterations as to certain records of the defendant. The defendant is not charged with altering or changing any records. This evidence was not admitted for any such purpose. The defendant is charged that it unlawfully did knowingly accept and receive a concession in certain counts and in other counts a concession whereby a discrimination was practiced. The question of the criminal intent is therefore involved in this case. So the evidence as to the erasures, alterations or changes in the record was admitted on that theory for the consideration of the jury, and they may give it such value as to such issue as they may deem proper. As to whether such changes, alterations or erasures were made by any agent, officer or employee of the defendant procuring such alleged concession, that is for the determination of the jury. It was admitted that the erasures, changes or alterations were made prior to the time the records were delivered to the agents of the government by the agents of the defendant. When the records were delivered to the agents of the government by the agents of the defendant such changes or erasure had already been made. Who else could have made the changes, alterations or erasures except an employee or officer or agent of the defendant? Why were such changes, alterations or erasures made? These are matters for your determination; and by whom were they made? If made by such officers, agents or employees of the defendant this is a matter for you to consider in determining as to whether or not there was a criminal intent in accepting and receiving such concession, if you find such was the case beyond a reasonable doubt. Where was this concession, if it was a concession, where was it accepted and received, or received, and where were these records kept relative to where such concession was received or accepted, if you find beyond a reasonable doubt that such concession was accepted or received? Now where were they? Who were the officers and the employees within the scope of their employment and within the scope of their authority that received or accepted such concession, if you find beyond a reasonable doubt that it was received or accepted? Now these records were within their custody and if they were changed by officers and agents with the scope of such authority who accepted or received such a concession, why was it done? These

are matters that address themselves to the ultimate consideration of a jury on the determination of the criminal intent in this case, if they find beyond a reasonable doubt that the offense has otherwise been proven.

In determining the name to be given a commodity to be delivered to a railroad company for interstate shipment, billed designated for such shipment, it should be the name by which it is generally known. If it is an article generally used in commerce its commercial name should be given; that is the name by which it is known and used in commerce; if the article is not an article generally used in commerce and not a general article of commerce, and has no such name, then you may look to its manufacture and look to those that sell it and buy it to see how it is called, and how it is denominated by them that manufacture it and by them that handle it. But the jury may be entitled to more; it may be necessary in order to be satisfied as to the name beyond a reasonable doubt you may have to look at the history of the article and its development.

Now you have got the field before you. Did it have a name in commerce? Did it have a name among manufacturers? After you have looked through that field are you satisfied as to the name beyond a reasonable doubt, or is it necessary to go back through its history and the development of its manufacture? All this evidence is before this jury and it is as I have said, it is for you to determine this ultimate fact.

The court instructs the jury as to the law and such instructions are binding upon the jury as to the law. The court may also, if he deems proper, express his opinion as to the weight or value of the evidence and give his reasons therefor. If the court expresses such opinion and gives such reasons therefor, it is the duty of the jury to consider such expressed opinion and reasons in the light of the evidence and in connection with all of the evidence in the case, but if the jury should not agree with the opinion of the court as to the weight or value of the evidence, as expressed by him, they are at liberty to disregard such opinion. The verdict of the jury must reflect the independent judgment of the twelve men; they are the ultimate triers of the fact.

I have already instructed you that the shipments as shown in this evidence were interstate shipments and are subject to interstate law. I have heretofore called that to your attention.

You may take your exceptions now.



Mr. Diggs: If the court please, your honor spoke with such rapidity, if there was any part I desired to take down I couldn't. If your honor will give us a few moments we will examine your honor's instructions. I do not know that there is any part we desire to except to, except I want to call the court's attention to where he used the word "alleged." The allegation said "knowingly, fraudulently and wilfully."

The Court: They didn't admit that, that was not intended, but they admitted the payment as to the amount and time, but they didn't admit that they fraudulently and unlawfully did it. That is what I meant as to the amount. They admit that on that car they paid so much freight, but they don't admit that in doing that that they did it unlawfully and that constituted a violation of the law.

Mr. Diggs: We ask the court to instruct the jury that the fact that we complied with the regulations of the Interstate Commerce Commission in billing and placarding the cars, should not be taken as an admission on our part, be imputed to us as an admission of guilt.

The Court: I did so instruct the jury in my charge.

Mr. Swacker: I know you did.

X The Court: I instructed the jury that they were not charged with having violated the safety act; there was no contention. Now that would only be a circumstance against them in the event that with that act it would be found that they were treating it as gasoline.

Mr. Swacker: That is just the point; that is the use of the name if we had used it. Though we did use it according to the evidence, gasoline would not be taken against us as an admission since we were compelled to use that name by these regulations.

The Court: I don't take that as an admission, but I think that is a circumstance. I don't take that as an admission of guilt but I take that as a circumstance with all these rules and regulations to determine as to whether or not that could be found that they were treating that as gasoline. I think that is for the jury to determine and not a question of law. I think that is a fact for the jury, because now—you get these rules and regulations—I will hear you on that. Let's get the regulations. That would be just a rule of conduct, a rule of action. The way I construe the rules and regulations—I am not saying this for the jury, they will not consider it—that it would be either liquefied



gas or gasoline. Now I will let each side—they say as to certain things should be billed as gasoline, casinghead gasoline, or what else?

Mr. Swacker: Casinghead naphtha.

The Court: There is another place down there, and they give the certain weights and things where they say it would be liquefied gas. Now I have instructed the jury that if a circumstance was even, one pointing to an innocent act and the other pointing to a criminal act, and they were equal, that they should resolve it in favor of the defendant and I had these rules and regulations in mind. I think that is fairly submitted.

Mr. Swacker: And we will have our exceptions on the question of the rates or can we just spread that on the record later, as to federal control?

The Court: As to whether they were in force?

Mr. Swacker: Yes.

The Court: Yes, you have got that in the evidence and you may consider that saved in the record. Now I will repeat that instruction, that if and in a line of conduct you find that the defendant in complying with the regulations or any of the requirements of the Interstate Commerce Commission that that line of conduct could be construed as criminal and also as being innocent and that they are equal or approximately equal, that it is the duty of the jury to adopt the view favorable to the defendant. Now I think that fairly submits that and I think that is the law.

Mr. Green: Yes, that is what we want.

Mr. Swacker: I don't want to burden the court further but make plain the point we are getting at, for instance, when we shipped to Pittsburgh we were compelled to use the rules and therefore the fact we called it gasoline when we shipped it to Pittsburgh cannot be taken as an admission on our part that that was the proper name for it. It was a compliance with the rules.

The Court: I have instructed the jury to take all the evidence and all the circumstances in consideration and now I have instructed them that wherever there was an act that they find was committed and that the evidentiary force of that act might tend to criminality and also tend to innocence and if they were approximately equal as to innocence and as to criminality, that they should adopt the one favorable to the defendant and I think that is as

far as I can go. That puts this case in the domain of the jury.

Mr. Diggs: The principal thing is as I recall is you said if the jury found beyond a reasonable doubt that we shipped this article knowing it to be gasoline and knew it not to be unrefined naphtha that it would be the duty *them* of the jury to find the defendant guilty, as I understood your honor's charge, you left out the words, "any reference to the fact of shipping it knowingly to obtain a concession."

The Court: I said with a purpose of violating a statute.

Mr. Diggs: Your honor was going so rapidly I could not keep up and that is the reason I wanted to see your honor's instructions.

The Court: As I said to the jury, they are charged here with unlawfully knowingly doing this to accept or receive a concession, and although you might believe they committed some other offence under this evidence, you would not be justified in convicting them except on the offence that is charged, and in that language where I say, if they did it knowingly with the purpose I restrict it to that language, with the purpose of accepting or receiving a concession, if they did that knowingly with that purpose and they believe that beyond a reasonable doubt, that that would constitute a criminal intent, the knowledge, and it must be wilfully and knowingly done, and if they did it with the knowledge and a purpose to do that, in this character of case it carries a criminal intent with it.

Mr. Swacker: And we have our exceptions in the record as to the denied charges?

The Court: Yes, every one of them, they are in the record. Wherever I have given them partially, it will show, the notation to be made they were refused as asked and given as amended and you have your exceptions each time. There will be no trouble about giving you that if the question is necessary to have these exceptions properly in the record. Now are there any other exceptions?

Mr. Diggs: Just a second. No, sir, that is all.

The Court: Now for the benefit of the jury, the clerk has prepared a form of verdict. The jury in the jury room will select their own foreman. They may find this defendant guilty on all counts. You may find it not guilty on all counts. It is within your power to find the defendant guilty on some counts and not guilty on other counts. If

you find the defendant guilty on all counts your foreman will sign the verdict as prepared. You will note that the verdict, a paragraph of the verdict relates to each count and there is a blank line before the word guilty as to each count. When there is a finding of not guilty you will write the word not on that line so as to properly frame the verdict. Now it is twenty-five minutes after noon. The jury will, under the usual instructions—now the case is submitted to you and it becomes more necessary now than ever to be careful—to be careful not only in the jury room but on the outside. You may go now until two o'clock when you will come back and the clerk will give you the indictment and the prepared verdict and the bailiff will show you to your room where you will begin your deliberations.

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In the District Court of the United States for the Eastern District of Oklahoma, United States of America, Plaintiff, vs. Gulf Refining Company, Defendant. No. 3716 Criminal.

#### REQUEST FOR INSTRUCTIONS.

Comes now the defendant and in writing request the court to give the following written instructions to the jury in behalf of the defendant, said instructions being hereto attached and numbered two to 36, both inclusive.

JAMES B. DIGGS,

FRANK M. SWACKER,

*Attorneys for Defendant.*

#### No. 2.

You are instructed that you cannot find the defendant guilty under any count in the indictment unless you believe from the evidence, beyond a reasonable doubt, that the commodity which is charged in the indictment to have been shipped to and received by the defendant, was gasoline, and the fact that you might believe from the evidence that the commodity shipped was, and should have been described as liquefied petroleum gas, and that such liquefied petroleum gas bore the same traffic charge as gasoline, is wholly immaterial to any of the issues in this case, and is not to be considered by you in arriving at your verdict.

Refused because covered by general charge—see No. 16. Exception saved. R. L. Williams, Judge.

## No. 3.

You are instructed that it is not sufficient for you to believe from the evidence that the commodity charged in the indictment to have been shipped to and received by the defendant might have been more accurately, or more appropriately described or designated as unfinished naphtha, but in order to find the defendant guilty, you must believe from evidence beyond a reasonable doubt, that the commodity described in the indictment was, as is in said indictment alleged, gasoline, and also must believe, beyond a reasonable doubt, that said commodity was not unrefined naphtha.

Given in general charge.

## No. 4.

You are further instructed that in order to find the defendant guilty, it is not sufficient that you believe, beyond a reasonable doubt, that the commodity shipped to and received by the defendant is not unrefined naphtha, but you must further believe from the evidence, beyond a reasonable doubt, that such commodity is, as it is charged in the indictment, to be, gasoline.

Refused because covered in general charge. R. L. Williams, Judge.

## No. 5.

You are further instructed that every concession, rebate or discrimination, no matter how honestly granted, made or received, is unlawful, and honesty of purpose or design does not prevent in a civil action or proceeding brought for that purpose, the recovery of the amount of any concession, rebate or discrimination established, and, in addition thereto, in proper cases penalties may be recovered. But, in order, for any claimed rebate, concession or discrimination to be subject to criminal prosecution, in order to constitute a misdemeanor or crime, the rebate, concession or discrimination must be knowingly granted, made, solicited, requested or received. That is, that the thing granted, made solicited, or received must, at the time of the granting, making, soliciting or reception, have been known to be a concession, discrimination or rebate, and have been granted, made, solicited or received as such, and it is the granting, making, soliciting or receiving of the same with such knowledge, that the law defines and punishes as a crime, and the law permits a resort to the criminal courts for punishment only where the guilty knowledge, purpose or design exists to grant, make, solicit or receive a rebate, concession or discrimination.

Refused as requested. Exceptions saved. Given as amended by me. Exceptions saved. R. L. Williams, Judge.

No. 6.

You are further instructed that upon the question of intent you are to consider carefully and give great weight to the uncontradicted evidence to the effect that the defendant corporation, previous to the time of its indictment, readily accorded full and complete access to its records and affairs to the government officials investigating the same; and you should bear in mind that such conduct is not consistent with the willful knowledge and design to obtain a concession or discrimination contrary to law; and as further bearing upon the question of intent, you should give consideration to the fact that the evidence shows undisputedly that the defendant company, at no time, sought to conceal its course or the character of the material shipped, but instead, even after it was aware of the fact that its acts were the subject of investigation by the government, continued in its course, which conduct is inconsistent with a guilty intent.

Refused, exception saved. R. L. Williams, Judge.

No. 7.

You are further instructed that the fact that the employees of the casinghead gasoline plants of the Gypsy Oil Company spoke of the commodity produced in said plants as gasoline, and that the officers and employees of other casinghead gasoline plants in the neighborhood of the Gypsy Oil Company's plants and government inspectors spoke of the product of said casinghead gasoline plants as gasoline, is not evidence that the commodity produced by the Gypsy Oil Company and shipped to and received by the defendant as unrefined naphtha was, in fact, gasoline, such statements not being evidence of the nature and character of the product so produced, shipped and received, but such evidence was admitted solely for the purpose of establishing the intent, if any, on the part of the defendant to receive a concession or discrimination in event that you should determine from the other evidence in the case, beyond a reasonable doubt, that the commodity shipped to and received by the defendant, was, in fact, gasoline, and you must first find from the evidence, beyond a reasonable doubt, that such commodity was gasoline, before you consider the fact that said commodity was described by the employees of such casinghead gasoline plants as gasoline.

Refused. Exceptions saved. R. L. Williams, Judge.

## No. 8.

You are further instructed that even if you find from the evidence, beyond a reasonable doubt, that the material or commodity alleged in the indictment to have been shipped to and received by the defendant was not unrefined naphtha, and if you should further find from the evidence, beyond a reasonable doubt, that such material or commodity is gasoline, it is your duty to return a verdict of not guilty, unless you further find from the evidence, beyond a reasonable doubt, that, at the time the defendant received the concession or discrimination set out in the indictment, it knew that the commodity shipped to and received by it was not unrefined naphtha, and was gasoline; and you must further find, beyond a reasonable doubt, that the defendant had no reasonable grounds for believing, and did not, in fact, believe such material or commodity to be unrefined naphtha, but at the time of receiving said concession or discrimination believed such material to be gasoline and received such concession or discrimination having such knowledge, and with the purpose and design of procuring the transportation of such commodity at rates less than those lawfully published and filed applicable thereto.

Refused. Exceptions saved. R. L. Williams, Judge.

## No. 9.

You are further instructed that unless all twelve of you are convinced, beyond a reasonable doubt, that the material could not be properly be *desinated* "unrefined naphtha," you cannot convict, but must return a verdict of not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.

## No. 10.

You are further instructed that unless all of you are convinced beyond a reasonable doubt, that the material shipped was actually gasoline, you cannot convict the defendant, and it is your duty to return a verdict of not guilty.

Refused, R. L. Williams, Judge.

## No. 11.

You are further instructed that if you believe that the material shipped may properly be described as either unrefined naphtha or gasoline, you must find the defendant not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.



## No. 12.

You are further instructed that even though you are convinced, beyond a reasonable doubt, that the material shipped is actually gasoline, you cannot convict unless you are all convinced, beyond a reasonable doubt, that the defendant knew the material shipped could not properly be described as unrefined naphtha.

Refused. Exceptions saved. R. L. Williams, Judge.

## SPECIAL CHARGE NO. 13 REQUESTED BY THE DEFENDANT.

Gentlemen of the Jury: You are instructed that if the defendant was acting in good faith and really believed the article shipped from Kiefer, Drumright and Jenks was unrefined naphtha, it cannot be guilty of the offense charged, even though you should be of the opinion that the article was gasoline and not unrefined naphtha.

Given amended. R. L. Williams, Judge.

## No. 14.

You are instructed that the defendant is not on trial for misbranding or misdescribing the commodity alleged in the indictment to have been shipped to and received by it, but is charged in the indictment with having shipped to and received by it gasoline, and if you find from the evidence, beyond a reasonable doubt, that the commodity shipped to and received by the defendant was not *property* and appropriately described by the name of unrefined naphtha and was not, in fact, unrefined naphtha, still you must find the defendant not guilty unless you further find from the evidence, beyond a reasonable doubt, that such commodity was gasoline, and should have been shipped and described as such, and further believe, beyond a reasonable doubt, that defendant knew it to be gasoline, and received the alleged-doubt, that defendant knew it to be gasoline, and received the alleged concession, or obtained the alleged discrimination with the intent thereby of procuring the transportation thereof at rates less than those lawfully published and filed applicable thereto; and unless you so believe beyond a reasonable doubt, you must find the defendant not guilty.

Refused. Exception saved. R. L. Williams, Judge.

## No. 15.

You are instructed that before you can find the defendant guilty, you must believe from the evidence, beyond a reason-



able doubt, that the commodity shipped to and received by the defendant on the dates set out in the indictment was not unrefined naphtha. You must further believe, beyond a reasonable doubt, that the commodity so shipped to and received by the defendant, as described in the indictment, was gasoline, and you must further find beyond a reasonable doubt that the defendant knew the commodity was gasoline and shipped the same with the intent of thereby procuring a concession or discrimination, and that the said commodity was shipped on the dates and at the times in the indictment set forth, and received the alleged concession or discrimination, knowing it to be such, and with the purpose and design of thereby procuring the transportation of the commodity described in the indictment at rates less than those lawfully published and filed applicable thereto.

Refused. Exceptions saved. R. L. Williams.

No. 16.

You are further instructed that the sole offense with which the defendant is charged, under the indictment, is in having shipped to and received by it, gasoline at a rate less than the legal rate established for gasoline, and unless you find from the evidence, beyond a reasonable doubt, that the commodity so shipped to and received by the defendant was, in fact, gasoline, it is your duty, and you are instructed to find the defendant not guilty even though you might believe from the evidence that the commodity shipped to and received by the defendant was not unrefined naphtha, but was a commodity which should have been shipped under another name than that of unrefined naphtha, and should have borne a rate equal to the rate lawfully published and filed for the transportation of gasoline.

Given as a part of general charge. Refused. Except. R. L. Williams, Judge.

No. 17.

If you are in doubt whether casinghead gasoline is a product of petroleum oil, you must find the defendant not guilty.

Refused. Exception saved. R. L. Williams, Judge.

No. 18.

You are further instructed that unless you believe from the evidence, beyond a reasonable doubt, that the defendant company was not honestly, though mistakenly, of the belief that the material shipped might properly be described as unrefined naphtha, you must find the defendant not guilty; in

this connection, you should give great weight to the uncontroverted evidence to the effect that the tariff naming the rate on unrefined naphtha was established at the request of the defendant company by the carriers involved upon the defendant company's representation that the product intended to be shipped was an unfinished article, that after publication of said tariff and before its becoming effective, the agent of the defendant company advised the agent of the carriers of the intention of said defendant company to begin shipping its product upon the becoming effective of said tariff under the name of, and at the rate applicable to the description of unrefined naphtha; that the shipping orders of the defendant company covering all the shipments set out in the indictment bore, upon their face, the rubber stamp placed thereon by the defendant company indicating that dome placards had been applied to the cars in conformity with the rules governing the safe transportation of the commodity, which rules required and limited the application of said placards to casinghead gasoline cars; further that said rules governing the safe transportation of explosives provided that the proper tariff name shall be used in describing any commodity subject thereto; that such shipments were subject to regular inspection of agents of the carriers whose duty it was to require that the material shipped be properly described, and to the further circumstance that while the evidence clearly shows that the agents of the carrier were at all times in position to be, and were by the defendant fully informed as to the nature of the commodity shipped, no action was taken by such carriers to question the description adopted by the defendant; in these circumstances, unless you believe, beyond a reasonable doubt, that the carriers deliberately intended to accord to the defendant a concession and discrimination, you must find the defendant not guilty.

Refused, covered. Exception saved. R. L. Williams, Judge.

No. 19.

You are further instructed that unless you are convinced, beyond a reasonable doubt, by evidence that each of the following circumstances is proved with respect to each count of the indictment, viz:—

(a) That the shipments therein set forth were made, transported and delivered to the defendant.

(b) That such shipment was of the weight set forth in each such count.

(c) That the rate alleged in the indictment as applicable

thereto were lawfully published and filed with the Interstate Commerce Commission of the United States and known to the defendant, or posted at the stations from which such shipments were made.

(d) That the commodity shipped to the defendant in each of the shipments set forth in each count of the indictment, was, in fact, gasoline;

(e) That the defendant paid to the carriers transporting such commodity charges for such transportation computed upon rates less than those lawfully published and filed, with full knowledge that such payments were so in fact less.

(f) That such shipments were made upon the dates and in the cars in each count alleged; you must find the defendant not guilty; if you have a reasonable doubt as to the existence of any of the foregoing facts you must find the defendant not guilty.

Refused. Exceptions. R. L. Williams, Judge.

No. 20.

You are instructed that common carriers may lawfully publish and file special rates applicable to the transportation of particular commodities under particular circumstances lower than those applicable to such commodities under ordinary circumstances, and you must regard the action of the carriers as shown by the evidence, in publishing rates applicable to the transportation of unrefined naphtha, at less than the rates previously applying on gasoline as entirely lawful, and you should draw no inference whatever against the defendant from the fact of its taking advantage of such lawfully published and filed rate on unrefined naphtha, providing you have reasonable ground of belief that that term appropriately comprehends casinghead gasoline blended or unblended, and if you believe such term does appropriately comprehend such commodity, you must find the defendant not guilty.

Refused. Exceptions saved. Covered by general charge. R. L. Williams, Judge.

No. 21.

If you are in doubt as to whether the proper name of the commodity shipped is gasoline or unrefined naphtha, or if you believe that neither of such names is the proper name, but that its proper name is casinghead gasoline, you must find the defendant not guilty; if you believe that the defendant company honestly believed that the commodity shipped could be properly designated as unrefined naphtha, regardless of your own

conclusions with respect thereto, you must find the defendant not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 22.

If you are in doubt whether casinghead gasoline is gasoline you must find the defendant not guilty.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 23.

The act of any officer or agent of the defendant, which may be imputed to it as evidence of guilt, or considered by you as a circumstance from which guilt can be inferred, must be an act done or performed by such officer or agent within the scope of his employment and must be an act *donw* or performed in knowingly receiving, accepting or obtaining a rebate, concession or discrimination.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 24.

Only the act of an agent, officer or employee of the defendant done and performed within the scope of his employment, can be imputed to the defendant for the purpose of establishing its guilt, and then only when knowingly done or performed for the purpose of procuring the commodity to be transported in interstate commerce at a rate less than the lawfully published and filed rate, with the intent, by such agent, officer or employee of the defendant obtaining thereby a rebate, concession or discrimination, and after such rebate, concession or discrimination has been obtained or received, no act of an agent, officer or employee of the defendant can be considered by you in determining the intent and guilty knowledge of the defendant, unless it be the act of the agent, officer or employee within the scope of his employment, who procured the unlawful transportation alleged and obtained the alleged rebate, concession or discrimination.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 25.

In order to find the defendant guilty as charged in the indictment, you must find from the evidence beyond a reasonable doubt, that defendant procured the commodity named in the indictment to be transported in interstate commerce over the routes named in the indictment, with the knowledge that it

was to be so transported at a rate less than the lawfully published and filed rates fixed for such commodity, with the intention of knowingly receiving a rebate, concession or discrimination, which intention must have continued up to and including the time of the reception of such rebate, concession or discrimination; and, unless you so find beyond a reasonable doubt, you must find the defendant not guilty; and, unless the defendant was guilty at the time of receiving the alleged rebate, concession or discrimination it could not become guilty by any subsequent act of its agents, officers or employees, and the fact that some of its books were subsequently changed or altered, is not evidence of guilt on the defendant, unless it appears that such changes or alterations were made by the agent, officer or employee of the company procuring the rebate, concession or discrimination, and you are instructed there is no evidence showing or tending to show such change or alteration was made, authorized or permitted by any such officer, agent or employee.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 26.

You are further instructed that certain evidence has been introduced with reference to changes and erasures of the defendant's records. No evidence has been introduced which shows, or tends to show, that any responsible officer or agent of the company authorized or acquiesced in this action, and you will, therefore, disregard any evidence upon this subject.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 27.

*You are instructed that the word, "refined," cannot properly be applied to any raw product of nature, but can only be applied to a product whose nature, physical characteristics, or component parts have, in some manner, been altered, changed or added to by the act of man. (Refused. Exceptions saved. R. L. Williams, Judge.)*

No. 28.

You are instructed that distillation is not, under all circumstances, essential to the art of refining, nor is distillation always applied for the purpose of removing impurities from the material distilled, and is often used, not for the purpose of removing impurities, or making the article distilled more pure, but for the purpose of separating the material into its component parts, or some portion of its component part, for the purpose of further treatment, or for the purpose of mix-

ing, blending or combining the same with like or different materials.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 29.

You are instructed that you are the sole judges of the credibility and weight to be attached to the evidence of any witness testifying in the cause, and if the testimony of any witness is contrary, opposed to, or is positively contradicted by the physical facts in the case, it is not only your privilege, and you are not permitted to attach any credit or weight thereto.

Covered by general charge.

No. 30.

You are instructed that you cannot consider the evidence relating to the Texas Company paying the gasoline rate at all, unless and until you are convinced, beyond a reasonable doubt, that the material shipped was actually gasoline.

Refused. Exceptions saved. R. L. Williams, Judge.

No. 31.

The law never presumes that an act is performed or done with a guilty or fraudulent intention, but required such guilt or fraudulent intention to be established by evidence.

Refused. Exceptions saved. Partially given. R. L. Williams, Judge.

SPECIAL CHARGE NO 32, REQUESTED BY THE DEFENDANT.

*Gentlemen of the Jury: You are instructed that the blending or weathering of the product of the plants at Kiefer, Drumright and Jenks for purposes of transportation did not make it a refined product.*

Refused. Exceptions saved. R. L. Williams, Judge.

No. 33.

Gentlemen of the Jury: You are instructed that in order to ship the product of the plants at Kiefer, Drumright and Jenks it was necessary for the defendant to make it conform to the rules and regulations of the Interstate Commerce Commission and that it was entirely proper for this to be done either by weathering or blending the product to such a degree as to make it conform to the said rules and regulations.

Refused. Exceptions. R. L. Williams, Judge.

No. 34.

Gentlemen of the Jury: You are instructed that the word "refine" as used in this case means "to bring an article to a given standard" and may be accomplished either by adding something to in the proper proportions, or by taking something from it to the proper degree.

Refused. Exceptions. R. L. Williams, Judge.

No. 35.

Gentlemen of the Jury: You are instructed that you are not authorized to consider as a refining process anything that may have happened to the casinghead gas below the surface of the earth; in other words, the word "refine" refers to something that man may have done to the article as distinguished from the processes of nature.

Refused. Exceptions. R. L. Williams, Judge.

No. 36.

Gentlemen of the Jury: You are instructed that the term "blending" as the same has been used in this case is a process of refining. You are further instructed, however, that the blending of the product of the plants at Kiefer, Drumright and Jenks with sufficient heavy naphtha to make it conform to the rules of the Interstate Commerce Commission did not necessarily make it a refined article. An article may have undergone some of the processes of refining and still be unrefined.

Refused. Exceptions. R. L. Williams, Judge.

*(Jury retired from the court room.)*

*Whereupon court took a recess until 2:00 o'clock p. m.*

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Sometime after the jury had retired to their room for the consideration of their verdict, the jury sent word through their bailiff to the judge of the court that they desired to see government's exhibits numbered 61 and 62. The judge of the court sought for counsel for both the government and the defendant but they were out of the court room. After some interval, counsel for the two sides came into the court room and the court stated to the counsel the message he received from the jury room, the jury then and there not being in open court but being in their jury room deliberating. Neither side agreed for said exhibits to be sent to the jury room, but counsel for the defendant in the absence of the jury asked the court to give the additional instructions to-wit:

*Give the additional instructions to-wit:*



"1st. That said safe transportation regulations were not rate regulations nor classifications controlling description to be used for rate purposes;

2nd. That the fact that defendant used the description 'gasoline' upon shipments where there were no unrefined naphtha rates applicable, should not be taken as an admission against defendant that the proper name of the commodity in question was gasoline, the use of such name by defendant being obligatory in such cases in order to comply with said safe transportation regulations;

3rd. That the fact, admitted by the plaintiff, that defendant at all times complied with said regulations insofar as affixing the 'dome cover placard' stamp upon its bill of lading, required and permitted only upon shipments containing casinghead product, and from the time said regulations were amended to provide that such product must be designated under the description 'gasoline, casinghead gasoline or casinghead naphtha,' the defendant at all times showed upon its bills, of lading, in addition to the description 'unrefined naphtha' the further description 'casinghead naphtha 1824-K' should be taken into consideration by the jury as evidence that the defendant did not conceal from the carriers the actual nature of the commodity shipped by it."

After same were requested the court sent the court bailiff to the jury room for the jury for the purpose of having the jury brought into open court and excusing them from further consideration of the case until the next morning, when he intended to pass on this instruction and to further instruct the jury if he thought it advisable. In a few moments the bailiff returned and reported that the foreman of the jury had stated to him that they had arrived at a verdict and in a few moments the jury were brought into open court in the custody of their regular bailiff and then and there returned their verdict which is contained in the record. So the court never had an opportunity to give to the jury the additional requested instructions or to further instruct the jury.

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In the United States District Court for the Eastern District of Oklahoma, United States of America, Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716.

### MOTION FOR NEW TRIAL.

Comes now, the defendant, Gulf Refining Company, and moves the court to set aside, vacate and hold for naught, the

verdict of the jury herein rendered against it on account of errors of law committed on the trial of said cause, to-wit:

First: On the ground and for the reason that the verdict of the jury so rendered against it, is contrary to law and the evidence.

Second: Because said verdict is against the evidence.

Third: Because said verdict is not reasonably supported by the evidence.

Fourth: For errors of law committed by the court on the trial of said cause, in admitting over the objection of the defendant, incompetent, irrelevant and immaterial evidence.

Fifth: For error of law committed on the trial of said cause in permitting evidence that the employees of the Gypsy Oil Company, Carter Oil Company, Smith & Chestnut Company, and Crosbie & Gillespie Company, and a large number of other companies, spoke of and referred to the products of said plants as gasoline, over the objection of said defendant.

Sixth: For error of law committed by the court on the trial of said cause in permitting the witnesses, E. L. League, Haigh and others, to testify as to the custom of the employees of casinghead producers and superintendents of plants, with which this defendant was in no wise connected, of speaking of and describing the casinghead gasoline produced at said plants, by the name of gasoline, over the objection and exception of this defendant.

Seventh: For error of law committed by the court on the trial of said cause, in permitting evidence of the fact that casinghead producers with whom this defendant was in no wise connected, shipped and described in their shipping orders and bills of lading, the products of their casinghead gasoline plants, as gasoline, over the objection and exception of this defendant.

Eighth: For error of law committed by the court in permitting evidence to be given that casinghead producers shipped their product over routes and between points other than those named in the indictment, as gasoline, in the absence of a showing that the same was shipped under the identical or similar circumstances or so shipped and described with the knowledge of this defendant, over the objection and exception of this defendant.

Ninth: The court committed error of law in permitting evidence of the practice of superintendents of casinghead gas plants, and the employees of such plants, as to the manner of

shipping and describing the products of such plants, it appearing that said shipments were made to points other than those mentioned in the indictment and made to refineries over the objection and exception of this defendant, for the reason that said evidence is hearsay as to the defendant, being transactions between persons with whom it was in no way connected, same not shown to be known to this defendant, and not to have been shipped under similar circumstances and conditions under which the products shipped by the Gypsy Oil Company to this defendant were shipped, and not shown to be shipped over routes and between points where there existed a tariff or rate on unrefined naphtha.

Tenth: For error of law committed by the court on the trial of said cause in permitting to be introduced in evidence, to the jury, over the objection and exception of this defendant, government's exhibits numbered 66, 67, 68, 69, 77, 78, 79, 86, 87, 88, 95, 98, 100 to 106 inclusive; and also government exhibits numbered 110 to 117 inclusive; also government exhibits numbered 135, 136 and 138; also government exhibits numbered 120 to 134 inclusive; also government exhibits 10, 11, 12, 13 and 14, and the tabulated statement checked by Witness Otey, numbered— on the ground that the same were incompetent, irrelevant and immaterial to any issue in this cause.

Eleventh: For error of law committed by the court in overruling the motion of the defendant to strike from the record the evidence that employees of casinghead gasoline plants in Oklahoma, called the product produced by them, gasoline, and the evidence of A. W. Barnhart, J. W. Freeman and other witnesses named and set out in said motion, showing the practice of the superintendents of casinghead plants, and the employees thereof, calling the product of said plants gasoline, to which action of the court, the defendant then and there objected to and excepted.

Twelfth: For error of law committed by the court on the trial of said cause in permitting the introduction of that portion of the evidence of the government, which was subsequently stricken out on motion of this defendant, for the reason and on the ground that the same is incompetent, irrelevant and immaterial, and the improper admission of such evidence being prejudicial to this defendant, and to the introduction of which evidence this defendant at the time objected and excepted.

Thirteenth: For error of law committed by the court on the trial of said cause in refusing defendant's motion to in-

struct the jury to bring in a verdict of not guilty, to which action of the court the defendant at the time excepted.

Fourteenth: For error of law committed by the court on the trial of said cause in refusing the motion of defendant to dismiss said cause on the ground of want of jurisdiction of the court to hear and determine the same, and that it appeared from the evidence in the case that there was involved the construction of the tariffs, and that such construction was necessary in order to determine whether casinghead gasoline was included within the meaning of gasoline, as such word was used in the tariffs, the determination of which question is by law vested solely in the Interstate Commerce Commission, to which action of the court the defendant then and there excepted.

Fifteenth: For error of law committed by the court on the trial of said cause in refusing to instruct the jury that a material variance between the allegations of the indictment and the evidence existed, and therefore the jury should bring in a verdict of not guilty on such account, to which action and order of the court the defendant then and there excepted.

Sixteenth: For error of law committed by the court in permitting the introduction of evidence to the effect that there were rates in force after December 28, 1917, governing the transportation of gasoline, whereas, there was no showing that such rates had been lawfully published and filed, or adopted by the Director General of Railroads, in accordance with the statute and the orders of the Interstate Commerce Commission affecting such publication, filing and adoption, to which the defendant then and there excepted.

Seventeenth: For error of law committed in the course of said trial by the attorneys for the government, consisting in improper comment in summing up, to the effect that the United States was pecuniarily interested in the outcome of said trial, and in making improper comments upon the wealth of the defendant, and in making improper comments to the effect that the defendant had violated the safe transportation regulations, notwithstanding the judicial admission of the government to the contrary; this defendant not being on trial on a charge of defrauding the United States, or of violating such safe transportation regulations, and such comment being highly prejudicial and calculated to inflame the jury, and such comment having been excepted to by the complainant.

Eighteenth: For error of law committed by the court in instructing the jury that there were lawfully established, pub-

lished and filed rates governing the transportation of gasoline subsequent to December 28, 1917, the evidence showing no publication, filing or adoption thereof in the manner and form provided by law, to which the defendant was allowed to except.

Nineteenth: For error of law committed by the court in charging the jury that they could look to the rules and regulations governing the safe transportation of explosives and other dangerous articles for the purpose of determining or assisting them in determining, the meaning of the term, gasoline, said regulations being no part of, and having nothing to do with the rate regulations and classifications governing freight rates, to which charge of the court, the defendant was, by the court, permitted to save an exception.

Twentieth: For error of law committed by the court in its general charge to the jury, that articles shipped in Interstate Commerce, should be billed and designated by the name which it is generally called, and if such article is generally used in commerce, its commercial name should be given, and that if an article generally used in commerce, its commercial name should be used, that is, the name by which it is used in commerce. If the article is not an article generally used in commerce and has no commercial name, then the jury should look to its manufacturer and look to those who sell and buy it, to see how it is called, the law being that tariffs named freight rates, are to be strictly construed with respect to the proper technical designation of the article.

Twenty-first: For error of law committed by the court in refusing special instructions of the defendant numbered 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 19, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35 and 36, to which action of the court the defendant then and there did except.

Twenty-second: For error of law committed by the court in refusing to give, as requested, or in substance, special instruction numbered 2, 5, 13, 16, 18, 20, 29, 30 and 31, to which action of the court the defendant at the time did except.

R. L. BATTS,

JAMES B. DIGGS,

FRANK M. SWACKER,

JNO. E. GREEN, JR.

T. C. HUMPHRY,

*Attorneys.*

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And upon consideration thereof the court overruled said motion to set aside the verdict and discharge the defendant or grant it a new trial, to which ruling of the court the defendant then and there duly excepted.

And thereupon the court continued the proceeding from time to time until the 10th day of January, 1921.

Whereupon, at said term, and within the time allowed by law, the defendant moved the court to arrest judgment on each count of the indictment, said motion being in words and figures as follows:

In the District Court of United States for the Eastern District of Oklahoma, United States of America, Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716 Criminal.

#### MOTION IN ARREST OF JUDGMENT.

Comes now the defendant, Gulf Refining Company, by its attorneys, and moves the court to arrest judgment against it upon each count of the indictment upon the following grounds:

1. Because the pretended indictment herein is not a true bill voted by the grand jury in accordance with law, as set forth in defendant's motion to strike the same from the records of the court and its plea in abatement duly filed and forming part of the record herein.

2. Because the matters and things set forth and charged do not constitute an offense against the laws of the United States.

3. Because the averments of each count of said indictment are too general, vague, indefinite and uncertain to inform the defendant of the nature and cause of the accusation against it, or apprise it with such reasonable certainty of the offense with which it is charged or what it may expect to meet on the trial so as to enable it to make its defense.

4. Because the averments of each count of said indictment are so vague, indefinite and uncertain, consisting in the pleader's conclusion as to what constitutes a concession, that the court is unable to say as a matter of law whether the acts of defendant constitute an offense against the United States.

5. Because the admissions of the plaintiff and the uncontroverted evidence show that there is involved a controversy as to the legal construction and application of purpose, of which character of controversy this court has no jurisdiction.

And as to counts 36 to 40, inclusive, and 81 to 85, inclusive, because the said counts are bad for duplicity, in that each of said counts there is attempted to be charged two separate and distinct offenses.

JAMES B. DIGGS,  
FRANK M. SWACKER,  
*Attorneys for Defendant.*

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Upon consideration whereof the court overruled said motion in arrest of judgment, as to each count of the indictment, to which ruling of the court the defendant then and there duly excepted.

And on said 10th day of January, 1921, the court entered judgment, as appears of record.

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And now on said 10th day of January, 1921, the same being a day within the time heretofore by the court allowed, for the preparation, settling and signing of bill of exceptions herein, comes the defendant, by its attorneys, and prays the court that the above and foregoing may be settled, signed and filed as its bill of exceptions herein.

JAMES B. DIGGS,  
FRANK M. SWACKER,  
*Attorneys for Defendant.*

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In the United States District Court for the Eastern District of Oklahoma, United States of America. Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716. Crim.

#### ACCEPTANCE OF SERVICE.

We, C. W. Miller, United States Attorney, and J. Stanley Payne, Special Assistant to the United States Attorney, representing the United States in the case of United States of America vs. Gulf Refining Company, No. 3716. Crim., do hereby accept service of the above and foregoing bill of exceptions in the above entitled cause, and do hereby agree that said bill of exceptions shall be approved, allowed and settled, and made a part of the record herein.

C. W. MILLER,  
*United States Attorney*  
J. STANLEY PAYNE,  
*Special Assistant to the United States Attorney.*

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In the District Court of the United States for the Eastern District of Oklahoma, United States of America, Plaintiff, vs. Gulf Refining Company, Defendant, No. 3716.

ORDER ALLOWING BILL OF EXCEPTIONS.

And now upon this 10th day of January, 1921, the court having considered the above and foregoing bill of exceptions, and the same having been heretofore served upon the United States Attorney, there being no suggestions of amendment thereto, and the same being now presented within the time allowance made therefor;

It is by the Court Ordered that the said Bill of Exceptions be and the same hereby is settled, signed, and allowed as a true, correct, and complete Bill of Exceptions herein, and the same is hereby ordered filed by the clerk of this court and made part of the record herein.

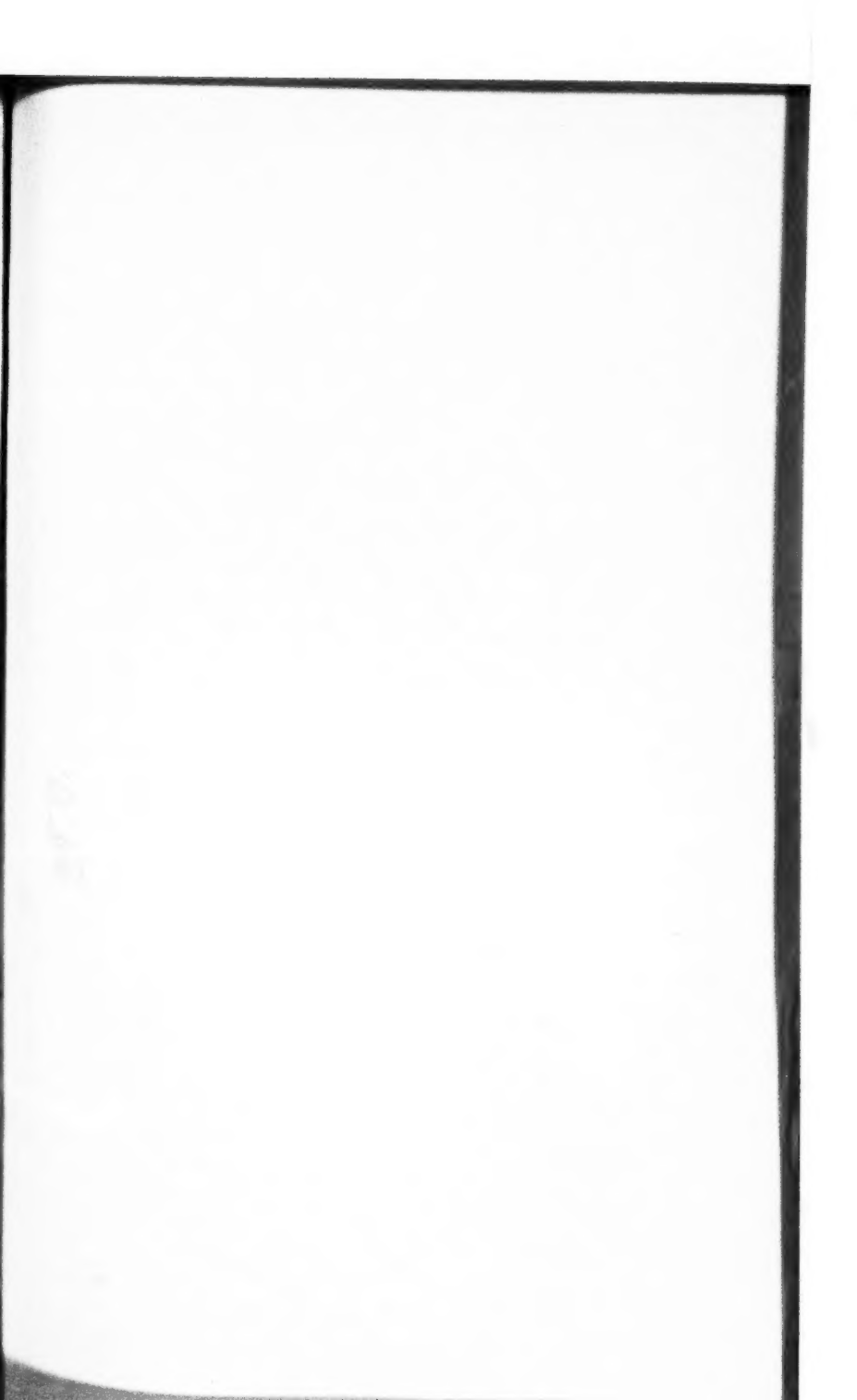
R. L. WILLIAMS,  
*Judge.*

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[CLERK'S NOTE:

Exhibits appended to the foregoing Bill of Exceptions will be found beginning Volume II of this Record.]

END



# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 40

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

GULF REFINING COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT.

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**VOLUME TWO.**

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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA.**

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PLEAS AND PROCEEDINGS BEFORE THE HONORABLE R. L. WILLIAMS, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

**UNITED STATES OF AMERICA, *Plaintiff,***  
**Criminal** *vs.* **No. 3716**  
**GULF REFINING COMPANY, a Corporation, *Defendant.***

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**GULF REFINING COMPANY, a Corporation,**  
***Plaintiff in Error,***  
*vs.*  
**UNITED STATES OF AMERICA, *Defendant in Error.***

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**Appendix to Bill of Exceptions—**

Containing Exhibits 1, 2, 5 to 9, inclusive; 15, 22 to 25, inclusive; 36 to 42, inclusive; 45 to 47, inclusive; 50, 52 to 57, inclusive; 61, 62, 65, 66, 68, 69, 71, 75, 77, 78, 80, 81 to 95, inclusive; 97 to 103, inclusive; 110 to 115, inclusive; 120; 135 to 140, inclusive; 142 to 152, inclusive.

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**Government's Exhibit 1.**

In the District Court of the United States of America for the Eastern District of Oklahoma. United States of America, plaintiff, v. Gulf Refining Company, defendant. No. 3716.

**STIPULATION.**

The United States of America, plaintiff, and the Gulf Refining Company, defendant, for the purpose of the trial upon indictment in the above entitled cause, stipulate and agree



that the following matters and things will be admitted as if fully proven at trial:

1. Throughout the period from December 1, 1916, to May 31, 1919, and prior and subsequent thereto, St. Louis-San Francisco Railway Company was a corporation organized and existing under the laws of the State of Missouri; The Kansas City Southern Railway Company was a corporation organized and existing under the laws of the State of Missouri; Texarkana & Forth Smith Railway Company was a corporation organized and existing under the laws of the State of Texas; Midland Valley Railroad Company was a corporation organized and existing under the laws of the State of Arkansas; The Atchison, Topeka & Santa Fe Railway Company was a corporation organized and existing under the laws of the State of Kansas; Gulf, Colorado & Santa Fe Railway Company was a corporation organized and existing under the laws of the State of Texas; that each of the said railroads were common carriers doing an interstate business prior to noon December 28, 1917.

2. Throughout the aforesaid period, and prior thereto the Gulf Oil Corporation was a corporation organized and existing under the laws of the State of New Jersey; that the Gypsy Oil Company was a corporation under the laws of the State of Oklahoma; that the Gulf Refining Company was a corporation organized and existing under the laws of the State of Texas; that the Gulf Pipe Line Company was a corporation organized and existing under the laws of the State of Texas; and during said period all of the capital stock of the Gypsy Oil Company, Gulf Refining Company and the Gulf Pipe Line Company was owned and controlled by the Gulf Oil Corporation, except that the directors of each of the three last mentioned companies held shares in each of said company sufficient to qualify them as directors.

All admissions subject to relevancy, materiality and competency.

(Signed) E. E. GANN

(Signed) T. G. CHAMBERS

(Signed) J. STANLEY PAYNE

*For the United States of America.*

(Signed) JAMES B. DIGGS,

*For the Defendant.*

**Government's Exhibit 2.**

For use in connection with the standard form of straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY.**

This Shipping Order must be legibly filled in, in ink, in indelible pencil, or in carbon, and retained by the Agent.

Shipper's No. \_\_\_\_\_. Agent's No. \_\_\_\_\_

Received, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Kiefer, Okla., December 17th, 1916, from Gypsy Oil Company Gasoline Department, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from....to....is in cents per 100 lbs.  
If times 1st....If 1st class....If 2nd class....If rule 25....  
If 3rd class....If rule 26....If rule 28....If 5th class....  
If 6th class....If special per....If special per....

(Mail address—Not for purposes of delivery.)

Consigned to Gulf Refining Company.

Destination, Port Arthur, State of Texas, County of.....

Route, Frisco to Ashdown KCS to Dest'n

Car Initial.....Car No.....

No.	Description of Articles and Special Marks		Weight. (Subject to correction)	Class or Rate	Check Column
1	Tank Car	Unrefined Naphtha			
GRCX	1030	8143			
	Outage 3"	94 8049	53123		

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received \$. . . . . to apply in prepayment of the charges on the property described hereon. . . . .

Agent or Cashier.

Per . . . . . (The signature here acknowledges only the amount prepaid.)

Charges Advanced: \$. . . . .

Certain rates are based on value of articles shipped. Where classifications or commodity tariffs provide rates based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein to be . . . . . Shipper. Per . . . . .

Gypsy Oil Co.—Gasoline Dept. Shipper. Per W. Millard JHR

Agent must detach and retain this shipping order and must sign the original Bill of Lading.

(Stamped with rubber stamp) This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission. Gypsy Oil Co., Gasoline Dept., Shippers, Per (Signed) W. Millard, Supt. JHR.

Inflammable Placard Applied and Dome Cover Caution Card.

# CONDITIONS.

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable

of loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market, or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, including the freight charges, if paid.

Except where the loss, damage, or injury complained of is due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, as conditions precedent to recovery, claims must be made in writing to the originating or delivering carrier within six months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within six months (or nine months in case of export traffic) after a reasonable time for delivery has elapsed; and suits for loss, damage, or delay shall be instituted only within two years and one day after delivery of the prop-

erty, or, in case of failure to make delivery, then within two years and one day after a reasonable time for delivery has elapsed.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary coo-  
perage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may, (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves, or

landings, shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations, and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other waters; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenance; or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of



lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

(It is stipulated by the parties that Exhibit No. 2 consists of 36 shipping orders, of which the foregoing is typical, and the others need not be printed.)

### Government's Exhibit 5.

For use in connection with the standard form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

#### ST. LOUIS AND SAN FRANCISCO RAILROAD.

James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.

This Shipping Order must be legibly filled in, in ink, in indelible pencil, or in carbon, and retained by the Agent.

Shipper's No. . . . . Agent's No. . . . .

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Kiefer, Okla., November 2nd, 1916, from Gypsy Oil Company—Gasoline Department, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from . . . to . . . is in cents per 100 lbs.  
If times 1st . . . If 1st class . . . If 2nd class . . . If rule 25 . . .  
If 3rd class . . . If rule 26 . . . If rule 28 . . . If 4th class . . .  
If 5th class . . . If 6th class . . . If special per . . . If special  
per . . . .

(Mail address—Not for purposes of delivery)

Consigned to Gulf Refining Company, Destination, Port Arthur, State of Texas, County of . . . . . Route, Frisco to Ashdown, c/o K.C.S. Car Initial . . . . . Car No. . . . .



No. Packages	Description of Articles and Special Marks	Weight, $\frac{1}{2}$ (Subject to correction)	Class or Rate	Check Column
6	Tank cars gasoline.			
GRCX	973	8056 Gals.	53050	F 9
	Outage	18		
GRCX	1017	8148 Gals.	53754	F 10
GRCX	1237	8099 Gals.	53453	F 11
GRCX	1251	8096 Gals.	53446	F 12
GRCX	1397	8099 Gals.	53453	F 13
GRCX	1718	8103 Gals.	53479	F 14

If charges are to be prepaid, write or stamp here, "To be Prepaid." . . . . Received \$ . . . . to apply in prepayment of the charges on the property described hereon. . . . . Agent or Cashier. Per . . . . (The signature here acknowledges only the amount prepaid.) Charges Advanced: \$ . . . .

Certain rates are based on value of articles shipped. Where Classifications or Commodity Tariffs provide rates based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein described to be . . . . . Shipper. Per . . . . .

Gypsy Oil Company—Gasoline Dep't. Shipper. Per W. Millard JM.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

(Rubber Stamp) This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation, according to the regulations prescribed by the Interstate Commerce Commission. W. Millard, JM.

#### Government's Exhibit 6.

For use in connection with the standard form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

ST. LOUIS AND SAN FRANCISCO RAILROAD.

James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.

This Shipping Order must be legibly filled in, in ink, in indelible pencil, or in carbon, and retained by the Agent.

Shipper's No. . . . . Agent's No. . . . .

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Kiefer, Okla., November 4th, 1916, from Gypsy Oil Company—Gasoline Dep't, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from . . . to . . . is in cents per 100 lbs. If times 1st. . . If 1st class. . . If 2nd class. . . If rule 25. . . If 3rd class. . . If rule 26. . . If rule 28. . . If 4th class. . . If 5th class. . . If 6th class. . . If special per. . . . If special per. . . .

(Mail address--Not for purposes of delivery)

Consigned to Gulf Refining Company, Destination, Port Arthur, State of Texas, County of . . . . . Route, Frisco to Ashdown, c/o K.C.S. Car Initial. . . . Car No. . . . .

No.	Description of Articles and Special Marks	Weight, (Subject to correction)	Class or Rate	Check Column
8	Tank cars gasoline.			
GRCX	222	6530 Gals.	43098	F 17
	242	6517 Gals.	43012	18
	251	6510 Gals.	42966	19
	915	8057 Gals.	53059	20
	Ontage	18		
	1143	8371 Gals.	55004	21
	Ontage	37		
	1245	8096 Gals.	53434	22
	1602	8023 Gals.	52952	23
	1619	8016 Gals.	52906	24

If charges are to be prepaid, write or stamp here, "To be

Prepaid.".....Received \$.....to apply in prepayment of the charges on the property described hereon. ....Agent or Cashier. Per....(The signature here acknowledges only the amount prepaid.) Charges Advanced: \$....

Certain rates are based on value of articles shipped. Where Classifications or Commodity Tariffs provide rates based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein described to be. ....Shipper. Per.....

Gypsy Oil Company—Gasoline Dep't. Shipper. Per W. Millard JN.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

(Rubber Stamp) This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation, according to the regulations prescribed by the Interstate Commerce Commission.

Gypsy Oil Co.—Gasoline Dept. Shippers. Per W. Millard, Supt. JN.

Inflammable placard applied and dome cover caution card.

#### **Government's Exhibit 7.**

For use in connection with the standard form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

#### **ST. LOUIS AND SAN FRANCISCO RAILROAD.**

James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.

This Shipping Order must be legibly filled in, in ink, in indelible pencil, or in carbon, and retained by the Agent.

Shipper's No..... Agent's No.....

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Kiefer, Okla., November 7, 1916, from Gypsy Oil Company—Gasoline Department, the property described below, in apparent good order, except as noted (contents and conditions of contents unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road,

otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from . . . to . . . is in cents per 100 lbs.  
 If times 1st . . . If 1st class . . . If 2nd class . . . If rule 25 . . .  
 If 3rd class . . . If rule 26 . . . If rule 28 . . . If 4th class . . .  
 If 5th class . . . If 6th class . . . If special per . . . If special per . . .

(Mail address—Not for purposes of delivery)

Consigned to Gulf Refining Company, Destination, Port Arthur, Texas, State of . . . , County of . . . Route, Frisco to Ashdown, c/o K.C.S. Car Initial . . . Car No. . . .

No.	Description of Articles and Special Marks	Weight, (Subject to correction)	Class or Rate	Check Column
3	Tank cars gasoline.			
GRCX	368 7076 Gals. Net	46504	F 30	
	Outage 1½" 30	7046		
GRCX	1225 8095 Gals.	53427	F 31	
GRCX	1347 8090 Gals.	53394	F 32	

If charges are to be prepaid, write or stamp here, "To be Prepaid." . . . Received \$. . . to apply in prepayment of the charges on the property described hereon. . . . Agent or Cashier. Per . . . (The signature here acknowledges only the amount prepaid.) Charges Advanced: \$. . .

Certain rates are based on value of articles shipped. Where Classifications or Commodity Tariffs provide rates based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein described to be . . . Shipper. Per . . .

Gypsy Oil Company—Gasoline Dep't. Shipper. Per W. Millard JN.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

(Rubber Stamp) This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation, according to the regulations prescribed by the Interstate Commerce Commission.

Gypsy Oil Co.—Gasoline Dept. Shippers. Per W. Millard, Asst. Supt

Inflammable placard applied and dome cover caution card.

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### Government's Exhibit 8.

For use in connection with the standard form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

#### ST. LOUIS AND SAN FRANCISCO RAILROAD.

James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.

This Shipping Order must be legibly filled in indelible pencil, or in carbon, and retained by the Agent.

Shipper's No. . . . . Agent's No. . . . .

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Kiefer, Okla., November 11, 1916, from Gypsy Oil Company—Gasoline Department, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from . . . to . . . is in cents per 100 lbs.  
 If times 1st . . . If 1st class . . . If 2nd class . . . If rule 25 . . .  
 If 3rd class . . . If rule 26 . . . If rule 28 . . . If 4th class . . .  
 If 5th class . . . If 6th class . . . If special per . . . If special  
 per . . . . .

(Mail address—Not for purposes of delivery)

Consigned to Gulf Refining Company, Destination, Port

Arthur, State of Texas, County of.....Route, Frisco to  
Ashdown, c/o K.C.S. Car Initial..... Car No.....

No.	Description of Articles and Special Marks	Weight, (Subject to correction)	Class or Rate	Check Column
1	Tank car gasoline.			
GRCX	392 7055 Gals. Net			
	Outage 1¾" 38	7017	46312	

If charges are to be prepaid, write or stamp here, "To be Prepaid."..... Received \$.....to apply in prepayment of the charges on the property described hereon. ....Agent or Cashier. Per.... (The signature here acknowledges only the amount prepaid.) Charges Advanced: \$....

Certain rates are based on value of articles shipped. Where Classifications or Commodity Tariffs provide rates based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein described to be..... Shipper. Per.....

Gypsy Oil Company--Gasoline Dep't. Shipper. Per W. Millard.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

(Rubber Stamp) This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation, according to the regulations prescribed by the Interstate Commerce Commission.

Gypsy Oil Co.--Gasoline Dept. Shippers. W. Millard, Asst. Supt.

Inflammable placard applied and dome cover caution card.

#### Government's Exhibit 9.

For use in connection with the standard form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

ST. LOUIS AND SAN FRANCISCO RAILROAD.

James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.

This Shipping Order must be legibly filled in, in ink, in indelible pencil, or in carbon, and retained by the Agent.

Shipper's No. .... Agent's No. ....

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Kiefer, Okla., November 10, 1916, from Gypsy Oil Company—Gasoline Department, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from .... to .... is in cents per 100 lbs.  
 If times 1st .... If 1st class .... If 2nd class .... If rule 25 ....  
 If 3rd class .... If rule 26 .... If rule 28 .... If 4th class ....  
 If 5th class .... If 6th class .... If special per .... If special per ....

(Mail address—Not for purposes of delivery)

Consigned to Gulf Refining Company, Destination, Port Arthur, State of Texas, County of ..... Route, Frisco to Sherman c/o H&TC to West Port Arthur. Car Initial. ....  
 Car No. ....

No.	Description of Articles and Special Marks	Weight, (Subject to correction)	Class or Rate	Check Column
3	Tank cars gasoline.			
GRCX	1020	8191 Gals.	54071	33
GRCX	1208	8083 Gals.	53348	33
GRCX	1319	8096 Gals.	53434	33

If charges are to be prepaid, write or stamp here, "To be Prepaid." .... Received \$.... to apply in prepayment of the charges on the property described hereon. .... Agent or Cashier. Per.... (The signature here acknowledges only the amount prepaid.) Charges Advanced: \$....

Certain rates are based on value of articles shipped. Where Classifications or Commodity Tariffs provide rates



based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein described to be.... Shipper. Per.....

Gypsy Oil Company—Gasoline Dep't. Shipper. Per W. Millardl JN.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

(Rubber Stamp) This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation, according to the regulations prescribed by the Interstate Commerce Commission.

Gypsy Oil Co.—Gasoline Dept. Shippers. Per W. Millard, Asst. Supt.

Inflammable placard applied and dome cover caution card.

#### Government's Exhibit 15.

1916-1917-

Statement showing amounts freight charges paid by Gulf Refining Co. to T & F S R R covering shipments of unrefined naphtha or casinghead gasoline moving from Kansas-Oklahoma points to Port Arthur, Texas.

Keifer, Okla.

Car.	Date of Shipt.		Freight Bill.	Amount Paid	Date Paid
GRCX 1030	12-17-16	1788	12-29-16	\$104.80	1-15-17
GRCX 1001	12-4-16	586	12-10-16	105.00	1-6-17
GRCX 1072	12-4-16	678	12-10-16	104.73	1-6-17
GRCX 1209	12-4-16	589	12-11-16	104.14	1-6-17
GRCX 1239	12-4-16	587	12-10-16	104.24	1-6-17
GRCX 1602	12-4-16	585	12-10-16	103.25	1-6-17
GRCX 1607	12-4-16	590	12-10-16	102.16	1-6-17
GRCX 1014	12-4-16	591	12-10-16	105.03	1-6-17
GRCX 1763	12-4-16	588	12-10-16	104.25	1-6-17
GRCX 2006	12-4-16	592	12-10-16	104.84	1-6-17
GRCX 437	12-6-16	971	12-16-16	104.08	1-6-17
GRCX 621	12-6-16	970	12-16-16	103.02	1-6-17
GRCX 1039	12-6-16	967	12-16-16	104.98	1-6-17
GRCX 1143	12-6-16	969	12-16-16	107.29	1-6-17
GRCX 1113	12-7-16	968	12-16-16	104.35	1-6-17
GRCX 1378	12-7-16	966	12-16-16	104.16	1-6-17

Car.	Date of Shipt.	Freight Bill.	Amount Paid	Date Paid
GRCX 1621	12-7-16	965	12-16-16	103.16 1-6-17
GRCX 1111	12-21-16	83	1-4-17	104.34 1-26-17
GRCX 1619	12-21-16	82	1-4-17	103.17 1-26-17
GRCX 309	12-24-16	173	1-3-17	85.47 1-26-17
GRCX 445	12-27-16	278	1-5-17	104.12 1-26-17
GRCX 1080	12-27-16	280	1-5-17	105.34 1-26-17
GRCX 1385	12-27-16	279	1-5-17	104.15 1-26-17
GRCX 422	12-28-16	610	1-9-17	90.30 1-26-17
GRCX 1100	12-21-16	611	1-9-17	104.30 1-26-17
GRCX 1220	12-28-16	749	1-12-17	104.20 1-26-17
GRCX 168	12-29-16	612	1-9-17	89.24 1-26-17
GRCX 054	12-29-16	613	1-9-17	104.17 1-26-17
GRCX 1079	12-29-16	614	1-9-17	104.85 1-26-17
GRCX 1136	12-29-16	615	1-9-17	104.41 1-26-17
GRCX 1211	12-29-16	616	1-9-17	104.16 1-26-17
GRCX 1232	12-29-16	617	1-9-17	104.18 1-26-17
GRCX 1602	12-29-16	618	1-9-17	103.26 1-26-17
GRCX 1612	12-29-16	619	1-9-17	103.26 1-26-17
GRCX 1763	12-29-16	620	1-9-17	104.25 1-26-17
GRCX 2016	12-29-16	621	1-9-17	104.93 1-26-17
GRCX 961	1-3-17	810	1-13	103.47 1-26-17
GRCX 1024	1-3-17	811	1-13	104.83 1-26-17
GRCX 973	1-3-17	812	1-13	103.47 1-26-17
GRCX 2006	1-3-17	813	1-13	104.84 1-26-17
GRCX 1327	1-3-17	814	1-13	104.20 1-26-17
GRCX 428	1-8-17	993	1-16	105.21 2-3-17
GRCX 1278	1-8-17	994	1-16	104.14 2-3-17
GRCX 1347	1-8-17	995	1-16	104.12 2-3-17
GRCX 2025	1-8-17	996	1-16	104.93 2-3-17
GRCX 629	1-10-17	1920	1-29	97.86 2-23-17
GRCX 1358	1-10-17	1919	1-22	102.16 2-23-17
GRCX 1356	1-10-17	1920	1-22	104.14 2-23-17
GRCX 328	1-19-17	1667	1-26	90.89 2-3-17
GRCX 445	1-19-17	182	2-4	104.74 2-23-17
GRCX 1153	1-19-17	1668	1-26	104.63 2-23-17
GRCX 1359	1-19-17	1669	1-26	104.07 2-23-17
GRCX 2008	1-19-17	1670	1-26	104.87 2-23-17
GRCX 1155	1-20-17	1951	1-30	104.63 2-23-17
GRCX 1225	1-20-17	1952	1-30	104.18 2-23-17
GRCX 1243	1-20-17	1953	1-30	104.16 2-23-17
GRCX 1397	1-20-17	2037	1-31	104.23 2-23-17
GRCX 2027	1-20-17	1954	1-30	104.88 2-23-17
GRCX 2013	1-24-17	344	2-7	104.87 2-23-17
GRCX 1462	3-30-17	98	4-2	104.17 5-3-17
GRCX 1061	3-5-17	705	3-10	104.57 3-31-17

Car.	Date of Shipt.		Freight Bill.		Amount Paid	Date Paid
GRCX 1155	3-5-17	704	3-10	104.69	3-31-17	
GRCX 1607	3-5-17	703	3-10	103.16	3-31-17	
GRCX 950	3-8-17	1034	3-14	103.72	4-13-17	
GRCX 1507	3-8-17	1035	3-14	154.74	4-13-17	
GRCX 1038	3-10-17	1295	3-17	104.91	4-13-17	
GRCX 1206	3-10-17	1294	3-17	104.11	4-13-17	
GRCX 332	3-13-17	1666	3-21	90.93	4-13-17	
GRCX 1029	3-13-17	1521	3-20	105.87	4-13-17	
GRCX 1064	3-13-17	1665	3-21	104.82	4-13-17	
GRCX 309	4-21-17	2435	4-29	85.75	5-15-17	
GRCX 332	4-21-17	2213	4-26	90.93	5-15-17	
GRCX 1029	4-21-17	2212	4-26	105.86	5-15-17	
GRCX 422	5-8-17	960	5-14	90.66	5-29-17	
GRCX 428	5-8-17	958	5-14	105.22	5-29-17	
GRCX 1178	5-8-17	961	5-14	104.64	5-29-17	
GRCX 620	5-8-17	955	5-14	103.20	5-29-17	
GRCX 1083	5-8-17	956	5-14	104.77	5-29-17	
GRCX 1237	5-8-17	957	5-14	104.24	5-29-17	
GRCX 1368	5-8-17	959	5-14	104.16	5-29-17	
GRCX 428	6-2-17	507	5-14	105.21	6-27-17	
GRCX 1083	6-2-17	506	5-14	104.77	6-27-17	
GRCX 1201	6-10-17	1191	6-16	104.02	7-14-17	
GRCX 1206	6-10-17	1333	6-18	104.11	7-14-17	
GRCX 1225	6-10-17	1189	6-16	104.18	7-14-17	
GRCX 1624	6-10-17	1190	6-16	103.13	7-14-17	
GRCX 1727	6-10-17	1185	6-16	104.26	7-14-17	
GRCX 1852	6-10-17	1183	6-16	105.15	7-14-17	
GRCX 1854	6-10-17	1182	6-16	105.23	7-14-17	
GRCX 1856	6-10-17	1184	6-16	105.26	7-14-17	
GRCX 1858	6-10-17	1181	6-16	105.19	7-14-17	
GRCX 1950	6-10-17	1186	6-16	103.13	7-14-17	
GRCX 1951	6-10-17	1187	6-16	103.10	7-14-17	
GRCX 1852	7-16-17	1582	7-22	105.15	8-6-17	
GRCX 1855	7-16-17	1581	7-22	105.26	8-6-17	
GRCX 1947	7-16-17	1770	7-25	103.13	8-6-17	
GRCX 1946	7-17-17	1580	7-22	103.10	8-6-17	
GRCX 1033	8-8-17	930	8-14	105.19	8-28-17	
GRCX 1206	8-8-17	929	8-14	104.10	8-28-17	
GRCX 1271	8-8-17	1042	8-12	104.10	8-28-17	
GRCX 1706	8-8-17	933	8-14	104.22	8-28-17	
GRCX 1708	8-8-17	928	8-14	104.26	8-28-17	
GRCX 924	8-13-17	1360	8-16	103.73	9-4-17	
GRCX 1721	8-13-17	1357	8-16	104.26	9-4-17	
GRCX 1728	8-13-17	1356	8-16	104.26	9-4-17	
GRCX 1774	8-13-17	1359	8-16	104.25	9-4-17	

Car.	Date of Shipt.	Freight Bill.	Amount Paid	Date Paid
GRCX 1798	8-13-17	1358 8-16	104.25	9-4-17
GRCX 1368	8-14-17	1624 8-19	104.16	9-4-17
GRCX 1865	8-14-17	1628 8-19	105.22	9-4-17
GRCX 1245	8-24-17	2326 8-29	104.20	9-27-17
GRCX 1710	9-12-17	1319 9-19	104.25	10-19-17
GRCX 1786	9-12-17	1320 9-19	104.25	10-19-17
GRCX 1978	9-12-17	1318 9-19	103.14	10-19-17
GRCX 1127	10-20-17	2232 1-1	103.69	11-19-17
GRCX 1366	10-25-17	219 1-4	104.16	12-8-17
GRCX 1774	10-25-17	218 1-4	104.25	12-8-17
GRCX 1978	10-25-17	215 1-4	103.14	12-8-17
GRCX 625	11-24-17	2491 1130	103.61	12-27-17
GRCX 630	11-24-17	2489 7-30	103.68	12-27-17
GRCX 2103	1-25-18	191 2-4	104.05	2-21-18
GRCX 2108	1-25-18	186 2-2	104.05	2-21-18
GRCX 2115	1-25-18	185 2-2	103.93	2-21-18
GRCX 2119	1-25-18	187 2-2	104.05	2-21-18
GRCX 2160	1-25-18	183 2-2	104.05	2-21-18
GRCX 2172	1-25-18	190 2-4	104.02	2-21-18
GRCX 2177	1-25-18	189 2-4	104.06	2-21-18
GRCX 2182	1-25-18	188 2-2	104.00	2-21-18
GRCX 2189	1-25-18	184 2-2	103.98	2-21-18
GRCX 2198	1-25-18	192 2-4	104.00	2-21-18
GRCX 1400	2-16-18	1728 2-26	104.17	3-11-18
GRCX 1708	3-14-18	1691 3-22	104.26	4-13-18
GRCX 2106	3-14-18	1698 3-22	103.96	4-13-18
GRCX 2107	3-14-18	1762 3-23	104.04	4-13-18
GRCX 2116	3-14-18	1694 3-22	104.04	4-13-18
GRCX 2120	3-14-18	1695 3-22	103.96	4-13-18
GRCX 2149	3-14-18	1696 3-22	104.04	4-13-18
GRCX 2154	3-14-18	1697 3-22	103.97	4-13-18
GRCX 2159	3-14-18	1700 3-22	103.98	4-13-18
GRCX 2197	3-14-18	1699 3-22	103.96	4-13-18
GQTX 401	4-1-18	552 4-8	103.58	5-1-18
GQTX 406	4-1-18	551 4-8	103.54	5-1-18
GQTX 436	4-1-18	550 4-8	103.50	5-1-18
GQTX 503	4-1-18	554 4-8	106.18	5-1-18
GQTX 554	4-1-18	553 4-8	106.73	5-1-18
GRCX 1250	4-26-18	88 5-3	104.22	5-31-18
GRCX 1430	4-26-18	87 5-3	104.18	5-31-18
GRCX 1816	4-26-18	91 5-3	105.70	5-31-18
GRCX 1854	4-26-18	90 5-3	105.23	5-31-18
GRCX 2123	4-26-18	89 5-3	104.00	5-31-18
GRCX 2166	4-26-18	93 5-3	103.97	5-31-18
GRCX 2197	4-26-18	92 5-3	103.96	5-31-18

Statement showing amount of freight charges paid by Gulf Refining Co. to T & F S covering shipments of unrefined naphtha or casinghead gasoline from Jenks, Okla., to Port Arthur, Texas.

Car.	Date of Shipt.		Freight Bill.		Amount Paid	Date Paid
GRCX 422	2-21-17	2080	2-28	90.64	3-31-17	
GRCX 1718	2-22-17	2082	2-28	104.29	3-31-17	
GRCX 434	3-25-17	2483	3-31	105.27	4-13-17	
GRCX 1369	3-25-17	2482	3-31	104.13	4-13-17	
GRCX 1321	3-29-17	497	4-8	104.23	5-3-17	
GRCX 1370	3-29-17	432	4-7	104.09	5-3-17	
GRCX 1178	4-12-17	1436	4-19	104.64	5-12-17	
GRCX 1209	4-13-17	1435	4-19	104.15	5-12-17	
GRCX 434	4-30-17	586	5-9	105.27	5-29-17	
GRCX 1229	5-1-17	587	5-9	104.07	5-29-17	
GRCX 1850	6-10-17	1172	6-16	105.21	7-14-17	
GRCX 1853	6-10-17	1171	6-16	105.17	7-14-17	
GRCX 1232	6-19-17	1757	6-24	104.17	7-14-17	
GRCX 1974	6-19-17	1758	6-24	103.05	7-14-17	
GRCX 1268	7-6-17	755	7-12	104.18	8-6-17	
GRCX 1270	7-6-17	754	7-12	104.09	8-6-17	
GRCX 449	7-7-17	1011	7-15	90.87	8-6-17	
GRCX 1037	7-7-17	1012	7-15	105.42	8-6-17	
GRCX 1220	7-11-17	1180	7-17	104.20	8-6-17	
GRCX 1743	7-11-17	1181	7-17	104.21	8-6-17	
GRCX 1957	7-15-17	1451	7-20	103.26	8-6-17	
GRCX 1983	7-15-17	1452	7-20	103.04	8-6-17	
GRCX 1956	7-21-17	2009	7-28	103.08	8-11-17	
GRCX 1959	7-21-17	2008	7-28	103.02	8-11-17	
GRCX 1245	8-7-17	927	8-11	104.20	8-28-17	
GRCX 2022	8-8-17	1156	8-14	104.94	9-4-17	
GRCX 1729	8-15-17	1629	8-19	104.22	9-4-17	
GPTX 600	9-23-17	2122	9-28	103.64	11-7-17	
GRCX 1071	9-23-17	2123	9-28	105.72	11-7-17	
GRCX 1624	10-2-17	585	10-7	103.14	11-7-17	
GRCX 1983	10-2-17	584	10-7	103.03	11-7-17	
GRCX 1254	10-9-17	1082	10-12	104.14	11-7-17	
GRCX 1864	10-9-17	1083	10-12	105.19	11-7-17	
GRCX 926	10-20-17	2132	10-27	103.69	11-19-17	
GRCX 1981	10-25-17	186	11-4	103.07	12-8-17	
GRCX 1265	10-27-17	187	11-4	104.09	12-8-17	
GRCX 2022	10-27-17	185	11-4	104.91	12-8-17	
GRCX 2124	1-2-18	2027	1-22	103.96	2-3-18	
GRCX 2183	1-2-18	2026	1-22	103.97	2-3-18	
GRCX 2150	6-7-18	651	6-14	103.91	7-2-18	
GRCX 2151	6-7-18	652	6-14	103.98	7-2-18	

Car.	Date of Shipt.	Freight Bill.	Amount Paid	Date Paid
GRCX 1335	5-1-18	568 5-9	104.13	5-31-18
GRCX 1712	5-1-18	567 5-9	104.26	5-31-18
GRCX 924	5-9-18	1305 5-19	103.73	5-31-18
GRCX 2178	5-9-18	1304 5-19	103.91	5-31-18
GRCX 2119	5-28-18	162 6-4	104.04	6-25-18
GRCX 2171	5-28-18	163 6-4	103.98	6-25-18
GRCX 764	6-20-18	1481 6-27	103.53	7-13-18
GRCX 1211	9-13-18	1172 9-19	128.20	9-25-18
GRCX 1446	9-13-18	1174 9-19	128.20	9-25-18
GRCX 1381	10-3-18	872 10-14	128.14	10-17-18
GRCX 1967	10-3-18	871 10-14	126.86	10-17-18
GRCX 2110	11-1-18	634 11-11	128.01	11-15-18
GRCX 2249	11-1-18	633 11-12	127.70	11-30-18
GRCX 1946	12-23-18	1715 12-28	126.91	1-6-19
GRCX 2245	12-23-18	1716 12-28	127.86	1-6-19
GRCX 1930	1-10-19	662 1-15	127.50	1-21-19
GRCX 2110	1-10-19	661 1-15	128.01	1-21-19
GRCX 2200	1-23-19	1398 1-29	127.86	2-1-19
GRCX 2230	1-23-19	1397 1-29	127.86	2-1-19
GRCX 2207	2-1-19	317 2-8	127.83	2-15-19
GRCX 2240	2-1-19	316 2-8	127.86	2-15-19
GPTX 401	2-12-19	969 2-18	127.48	2-24-19
GRCX 2155	2-12-19	970 2-18	127.99	2-24-19
GRCX 2185	3-12-19	1074 3-17	127.99	3-19-19
GRCX 2223	3-12-19	1073 3-17	127.75	3-19-19
GRCX 2120	1-1-18	714 1-9	103.96	1-24-18
GRCX 1072	1-28-18	482 2-8	171.96	2-27-18
GRCX 1957	1-28-18	228 2-5	171.66	2-27-18
GRCX 1277	4-17-18	1607 4-23	104.16	5-16-18
GRCX 1431	4-17-18	1608 4-23	104.12	5-16-18
GRCX 1607	4-18-18	1760 4-24	103.17	5-16-18
GRCX 1974	4-18-18	1761 4-24	103.16	5-16-18
GRCX 2101	5-15-18	1543 5-22	103.99	6-15-18
GRCX 2120	5-15-18	1542 5-22	103.96	6-15-18

Statement showing amount of freight charges paid by Gulf Refining Co. to T & F S R R covering shipments of unrefined naphtha or casing head gasoline from Drumwright, Okla. to Port Arthur, Texas.

Car.	Date of Shipt.	Freight Bill.	Amount Paid	Date Paid
GRCX 1228	6-16-18	1287 6-24	109.43	7-13-18
GRCX 1708	6-16-18	1288 6-24	109.60	7-13-18
GRCX 1726	6-16-18	1289 6-24	109.55	7-13-18

Car.	Date of Shipt.	Freight Bill.	Amount Paid	Date Paid
GRCX 1744	6-16-18	1290 6-24	109.54	7-13-18
GRCX 2199	6-16-18	1291 6-24	109.30	7-13-18
GRCX 1116	7-19-18	1577 7-25	136.15	8-15-18
GRCX 1383	9-3-18	550 9-11	133.59	9-20-18
GRCX 1728	9-3-18	551 9-11	133.67	9-20-18
GRCX 2119	9-3-18	552 9-11	133.39	9-20-18
GRCX 2160	9-3-18	626 9-12	133.39	9-19-18
GRCX 1225	9-5-18	703 9-13	133.57	9-19-18
GRCX 1455	9-5-18	699 9-13	133.49	9-19-18
GRCX 1470	9-5-18	700 9-13	133.62	9-19-18
GRCX 1611	9-5-18	698 9-13	132.28	9-19-18
GRCX 2113	9-5-18	697 9-13	133.29	9-19-18
GRCX 2170	9-5-18	702 9-13	133.39	9-19-18
GRCX 2170	9-5-18	701 9-13	133.27	9-19-18
GRCX 251	9-19-18	1764 9-28	107.42	10-7-18
GRCX 745	10-4-18	950 10-16	133.29	10-19-18
GRCX 2112	10-4-18	949 10-16	133.37	10-19-18
GRCX 1707	10-30-18	308 11-7	133.67	11-14-18
GRCX 2173	12-2-18	596 12-13	133.22	12-18-18
GRCX 2183	12-2-18	597 12-13	133.29	12-18-18
GRCX 2157	12-6-18	763 12-14	133.19	12-21-18
GRCX 1976	12-6-18	764 12-14	132.10	12-23-18
GRCX 2194	12-10-18	1079 12-19	133.50	12-26-18
GRCX 1762	12-19-18	1644 12-30	133.62	1-3-19
GRCX 2207	12-19-18	1645 12-30	133.16	1-3-19
GRCX 1956	12-30-18	1589 12-30	132.15	1-1-19
GRCX 2185	1-23-19	1477 1-31	133.32	2-4-19
GRCX 2171	1-23-19	1473 1-31	133.30	2-4-19
PCX 1549	1-23-19	1478 1-31	132.48	2-4-19
GRCX 1956	1-8-19	682 1-16	132.15	1-21-19
GRCX 2177	1-8-19	681 1-15	133.35	1-21-19
GRCX 2178	1-8-19	685 1-16	133.22	1-21-19
GRCX 2196	1-8-19	684 1-16	133.37	1-21-19
GRCX 2248	1-8-19	683 1-16	133.07	1-21-19
GRCX 2209	1-2-19	414 1-10	133.07	1-7-19

### Government's Exhibit 22.

For use in connection with the Standard Form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908. Including provisions to conform with the requirements of the Cummins Amendment to the Act to Regulate Commerce, effective June 2, 1915.



## MIDLAND VALLEY RY.

This Shipping Order must be legibly filled in, in ink, or indelible pencil, or in carbon, and retained by the Agent.

Shipper's No. .... Agent's No. ....

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Jenks, Okla., 4-30, 1918, from Totem Gasoline Co. the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from.... to.... is in cents per 100 lbs.  
 If times 1st.... If 1st class.... If 2d class.... If 3d class....  
 If 4th class.... If 5th class.... If A class.... If B class....  
 If C class.... If D class.... If E class.... If Special per....  
 If Special per....

(Mail address—Not for purposes of delivery.)

Consigned to The Texas Co. c/o T. Reiber, Supt. Destination Port Arthur, State of Texas, County of..... Route M. V. Panama c/o KCS. Car Initial T. C. X. Car No. 2777.

Tank Cars	Description of Articles and Special Marks	Gals.	WtSub. to Cor.	Class or Rate	Check Column
-----------	---	-------	----------------	---------------	--------------

1	Gasoline 4 Inflammable Placards Applied	8092	53385		
4	Liquid Petroleum Gas Placards Applied. Special Caution Placards Applied to Dome.				

Dome Capacity.	Shell Capacity.
Inches in Dome at	Temp.
2½ inches out of shell at 53° Temp.	

If charges are to be prepaid, write or stamp here, "To be Prepaid." ..... Received \$. .... to apply in payment of the charges on the property described hereon ..... Agent or Cashier.

Per.....(The signature here acknowledges only the amount prepaid). Charges Advanced \$. .....

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

Totem Gasoline Co. Shipper. Per Geo. Anderson.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

### Government's Exhibit 23.

For use in connection with the Standard Form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908. Including provisions to conform with the requirements of the Cummins Amendment to the Act to Regulate Commerce, effective June 2, 1915.

### MIDLAND VALLEY RY.

This Shipping Order must be legibly filled in, in ink, or indelible pencil, or in carbon, and retained by the Agent.

Shipper's No..... Agent's No.....

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Jenks, Okla., 4-27, 1918, from Totem Gasoline Co. the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from. . .to. . .is in cents per 100 lbs.  
 If times 1st . . .If 1st class. . .If 2d class. . .If 3d class. . .  
 If 4th class. . .If 5th class. . .If A class. . .If B class. . .  
 If C class. . .If D class. . .If E class. . .If Special per. . .  
 If Special per. . .

(Mail address—Not for purposes of delivery.)

Consigned to The Texas Co. c/o T. Reiber, Supt. Destin-

ation Port Arthur, State of Texas, County of..... Route  
M. V. Panama KCS. Car Initial T. C. X. Car No. 633.

Tank Cars	Description of Articles and Special Marks	Gals.	WtSub. to Cor.	Class or Rate Column	Check
1	Gasoline 4 Inflamable Placards Applied	10671	70429		
	Liquified Petroleum Gas. Inflamable Placards Applied.				
4	Special Caution Placards Applied to Dome.				
	Dome Capacity	Shell Capacity.			
	Inches in Dome at	Temp.			
	2½ inches out of shell at 59°	Temp.			

(Rubber Stamp) 2% Vacant Space Allowed Per I. C. C.  
Ruling.

If charges are to be prepaid, write or stamp here, "To be  
Prepaid.".....Received \$......to apply in payment of the  
charges on the property described hereon..... Agent or  
Cashier.

Per.....(The signature here acknowledges only the  
amount prepaid). Charges advanced \$......

This is to certify that the above articles are properly de-  
scribed by name and are packed and marked and are in proper  
condition for transportation according to the regulations pre-  
scribed by the Interstate Commerce Commission.

Totem Gasoline Co, Shipper. Per Geo. Anderson.

Agent must detach and retain this Shipping Order and  
must sign the Original Bill of Lading.

#### Government's Exhibit 24.

For use in connection with the Standard Form of Straight  
Bill of Lading approved by the Interstate Commerce Commis-  
sion by Order No. 787 of June 27, 1908. Including provisions  
to conform with the requirements of the Cummins Amend-  
ment to the Act to Regulate Commerce, effective June 2, 1915.

MIDLAND VALLEY RAILROAD COMPANY.

"ARKANSAS RIVER ROUTE"

This Shipping Order must be legibly filled in, in ink, or  
indelible pencil, or in carbon, and retained by the Agent.

Shipper's No..... Agent's No.....

Receive, subject to the classifications and tariffs in effect

on the date of issue of this Shipping Order, at Kiefer, Okla., April 1st, 1918 from Crosbie & Gillespie the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from Kiefer, Okla., to Port Arthur, Texas, 33c collect is in cents per 100 lbs.

If times 1st....If 1st class....If 2d class....If 3d class....  
If 4th class....If 5th class....If A class....If B class....  
If C class....If D class....If E class....If Special per....  
If Special per....

(Mail address—Not for purposes of delivery.)

Consigned to The Texas Co. c/o T. Reiber, Supt. Destination Port Arthur, State of Texas, County of..... Route MV-KCS. Car Initial. As below. Car No....

No. Packages	Description of Articles and Special Marks	Weight, (Subject to correction)	Class or Rate	Check Column
TCX 2226	8250 Gallons Gasoline	54450		1412
TCX 3113	8055 Gallons Gasoline	53163		1412
Inflammable placards O. R. L.				

If charges are to be prepaid, write or stamp here, "To be Prepaid.".....Received \$.....to apply in prepayment of the charges on the property described hereon. ....Agent or Cashier. Per....(The signature here acknowledges only the amount prepaid.) Charges Advanced: \$....

Certain rates are based on value of articles shipped. Where Classifications or Commodity Tariffs provide rates based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein described to be.....Shipper. Per.....

The Texas Co., Shipper. Per I. J. Shields.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

### Government's Exhibit 25.

For use in connection with the Standard Form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908. Including provisions to conform with the requirements of the Cummins Amendment to the Act to Regulate Commerce, effective June 2, 1915.

MIDLAND VALLEY RAILROAD COMPANY.

"ARKANSAS RIVER ROUTE"

This Shipping Order must be legibly filled in, in ink, or indelible pencil, or in carbon, and retained by the Agent.

Shipper's No. .... Agent's No. ....

Receive, subject to the classifications and tariffs in effect on the date of issue of this Shipping Order, at Kiefer, Okla., April 27, 1918, from Crosbie & Gillespie the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from Kiefer, Okla., to Port Arthur, Texas, 33c collect is in cents per 100 lbs.

If times 1st. . . . If 1st class. . . . If 2d class. . . . If 3d class. . . .  
If 4th class. . . . If 5th class. . . . If A class. . . . If B class. . . .  
If C class. . . . If D class. . . . If E class. . . . If Special per. . . .  
If Special per. . . .

(Mail address—Not for purposes of delivery.)

Consigned to The Texas Co. c/o T. Reiber, Supt. Destination Port Arthur, State of Texas, County of. . . . . Route MV-Panama-KCS. Car Initial as below. Car No. ....

No. Packages	Description of Articles and Special Marks	Weight, (Subject to correction)	Class or Rate	Check Column
TCX 4691	8044 Gallons Gasoline	53090		
TCX 4435	8260 Gallons Gasoline	54516		
TCX 4678	8052 Gallons Gasoline	53143		
TCX 3068	8053 Gallons Gasoline	53150		
TCX 3058	8055 Gallons Gasoline	53163		

Inflammable placards and white dome placards applied.  
O. R. L.

If charges are to be prepaid, write or stamp here, "To be Prepaid." Collect. Received \$. . . . . to apply in prepayment of the charges on the property described hereon. . . . . Agent or Cashier. Per. . . . (The signature here acknowledges only the amount prepaid). Charges advanced \$. . . . .

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

The Texas Co., Shipper. Per I. J. Shields.

Agent must detach and retain this Shipping Order and must sign the Original Bill of Lading.

### **Government's Exhibit 36.**

I. C. C. No. 1048—Cancels I. C. C. No. 999. Only three supplements to this Tariff will be in effect at any time.

### **SOUTHWESTERN LINES' TARIFF NO. 26-T**

Cancels Southwestern Lines' Tariff No. 26-S

For Individual Lines' Tariff Numbers, Current and Cancelled, see page 3.

Local, joint and proportional tariff applying on classes and commodities between points in Oklahoma named on pages 76 to 82, inclusive, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive.

Governed, except as otherwise provided herein, by Western Classification No. 52 (R. C. Fyfe's I. C. C. No. 10, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that

are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued June 10th, 1914. *Effective July 24th, 1914*; except as noted on page 170 where reference is made to Note G; on page 58 where reference is made to (20); on pages 53 and 69 where reference is made to (18); on pages 5, 80, 134, 136, 141, 142, 150, 152, 165, 169, 175, 176, 178 and in item 1572 where reference is made to (21); in items 1422, 1428, 1638, 1680, 1698 and 1710 where reference is made to (8); in item 1764 where reference is made to (9); in item 1614 where reference is made to (10); in item 1536 where reference is made to Note C; in item 2358 where reference is made to Note A; in item 2546 where reference is made to Note A; in item 3024 where reference is made to Note A; in item 2606; and in items 1542, 1548, 3036, 3042, 3048, and 3054 where reference is made to (22).

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 21600.

(Stamped:) Public File. Amended by-I. C. C. No. 1186; Effective 5-2-1917. Cancelled by-I. C. C. No. 1226; Effective 5-10-18. Received; Interstate Commerce Commission; 41005; Jun 12 1914; Division of Tariffs.

\* \* \* \* \*



Pages 4, 5 and 6.

## PARTICIPATING CARRIERS

Railway Abbreviations	NAMES OF CARRIERS	Under Powers of Attorney to F. A. Leland Form FX 1 No.	*
A. T. & S. F.	Atchison, Topeka & Santa Fe Ry	33	*
K. C. S.	The Kansas City Southern Ry. Co.	24	*
St. L. & S. F.	St. Louis & San Francisco R. R. Co.	100	*
	James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.		
Mid. Val.	Midland Valley R. R. Co.	18	*
St. L. S. F. & T.	St. Louis, San Francisco & Texas Ry. Co.	23	*
	Avery Turner, G. H. Schleyer, Receivers (Corrected)		
T. & N. O.	Texas & New Orleans R. R. Co.	12	*
H. & T. C.	Houston & Texas Central R. R. Co.	16	*
T. & Ft. S.	Texarkana & Ft. Smith Ry. Co.	20	*

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GEOGRAPHICAL LIST OF TEXAS POINTS FROM AND TO WHICH  
RATES APPLY SHOWING GROUP BASES APPLICABLE

Index Nos.	STATIONS ON	Group Bases
	T. & N. O. R. R.	
5836	West Port Arthur.....	8
5838	Port Arthur.....	8

Page 62.

7056	T. & Ft. S. Ry. Port Arthur. . . . .	8
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GEOGRAPHICAL LIST OF OKLAHOMA POINTS FROM \* \* \* WHICH  
RATES APPLY.

Index Nos.	STATIONS ON	Group Basis
	Midland Valley R. R.	
9186	Jenks. . . . .	*

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## GEOGRAPHICAL LIST OF OKLAHOMA POINTS FROM \* \* \* WHICH RATES APPLY.

Index Nos.	STATIONS ON
	St. L. & S. F. R. R.
10100	Kiefer. . . . .

Page 170.

## COMMODITY RATES.

On	From
OIL: Petroleum Crude Oil and Petroleum Fuel Oil; in straight or mixed carloads; minimum weight 26,000 pounds, except that shipments transported in tank cars will be subject to Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues * * *	Following points in Oklahoma * Kiefer
To points in Texas shown on pages 171 to 174, inclusive.	*

Pages 173 and 174.

For Application see page 170.

TO POINTS IN TEXAS SHOWN BELOW, \* \* \* RATES IN CENTS PER 100 POUNDS.

Station.	Rates
Port Arthur. . . . .	15
West Port Arthur. . . . .	15

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
1536	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Cir-	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

cular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \*\*\* on the articles described in Items 2490 to 2546 or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive of tariff, as amended.

Page 232.

COMMODITY RATES.

Item No.	COMMODITIES Carloads, ***	FROM	TO	Rates in Cents per 100 lbs. *
2546	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....	*	Following	
		Kiefer	points in	
		*	Texas	33
			*	
			Port Arthur	
			*	

*Supplement No. 2 to I. C. C. No. 1048.* Cancels Supplement No. 1. Supplement No. 2 contains all changes from the original Tariff that are effective on the date hereof.

### **SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 2.*

Cancels Supplements No. 1.

Supplement No. 2 contains all changes from the original Tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of Tariff and page 5 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of Tariff, and page 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 52 (R. C. Fyfe's I. C. C. No. 10, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F' (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

**Special Notice**—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued July 18th, 1914. *Effective August 24th, 1914; ex-*

cept as noted on page 7; in item 2546a where reference is made to Note A; in item 2025; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 21690.

(Stamped:) Public File. Received; Interstate Commerce Commission; 47800; Jul 18 1914; Division of Tariffs.

\* \* \* \* \*

Page 9.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
No.	Carloads, * * *	*	
1536a cancels 1536	<p><b>OILS:</b> Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....</p> <p>Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....</p> <p>NOTE A.—Rates will not apply * * * on the articles described in Items 2490 to 2546a, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174 inclusive of tariff as amended.</p>	<p>Following points in Oklahoma * Kiefer *</p>	<p>Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13</p>

Page 10.

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. *
	* * * * *	* * *	* * *	*
2546a	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues. ....	* Okla. Kiefer," *	Following points in Texas * West Port Arthur, Tex. (See Note A.) Port Arthur	33   33
2546	Note A.—Effective July 24th, 1914, issued under authority of Rule 77-(a) of Interstate Commerce Commission Tariff Circular No. 18-A. The rate to the more distant point appears in Southwestern Lines' Tariff 26-T (F. A. Leland's I. C. C. No. 1048), Item 2546.			

*Supplement No. 4 to I. C. C. No. 1048.* Cancels Supplements Nos. 2 and 3. Supplement No. 4 contains all changes from the original Tariff that are effective on the date hereof.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 4.*

Cancels Supplements Nos. 2 and 3.

Supplement No. 4 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, and page 5 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, and page 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 52 (R. C. Fyfe's I. C. C. No. 10, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate

points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued August 18th, 1914. *Effective September 24th, 1914*; except as noted on page 18 where reference is made to Note H; on page 17 where reference is made to Note I; on page 17 where reference is made to Note B; on page 7 where reference is made to (25); and in items 1392a, 2982a, 2898a, 2952a, 2958a and 2964a; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 21801.

(Stamped:) Public File. Received; Commerce Commission; 55053; Aug 20 1914; Division of Tariffs.

\* \* \* \* \*

Page 19.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed			
1536a		Following points in Oklahoma	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
cancels		Kiefer	
1536		*	



in item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification.....

NOTE A.—Rates will not apply \*\*\* on the articles described in Items 2490 to 2546a, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of tariff as amended. Reissue; effective August 24, 1914, in Supplement No. 2.

Page 21.

# COMMODITY RATES.

Item No.	COMMODITIES Carloads, ***	FROM	TO	Rates in Cents per 100 lbs.
2546a	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....	Reissue; effective August 24, 1914, in Supplement No. 2, except as noted.	Following points in Texas; * Port Arthur * West Port Arthur, Tex. (See Note A.)	33
2546	NOTE A.—Reissue; effective July 24, 1914, in Supplement No. 2.	* Kiefer, Okla. *		

Supplement No. 8 to I. C. C. No. 1046. Cancels Supplement No. 4. Supplements Nos. 7 and 8 contain all changes from the original tariff that are effective on the date hereof.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

Supplement No. 8.

Cancels Supplement No. 4.

Supplements Nos. 7 and 8 contain all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 7 of supplement 7 and page 10 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 6 of supplement No. 7 and pages 5 to 7 herein.

Governed, except as otherwise provided herein, by Western Classification No. 52 (R. C. Fyfe's I. C. C. No. 10, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued October 29th, 1914. *Effective December 1st, 1914;* except as noted in individual items.

Issued by F. A. Leland, agent, St. Louis, Mo.

Authority No. 22129.

(Stamped:) Public File. Received; Interstate Commission; 72692; Oct 30 1914; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
	Carloads, * * *	*	*
1536a can- cels 1536	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....</p> <p>Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification.....</p> <p>NOTE A.—Rates will not apply * * * on the articles described in Items 2490 to 2546a, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of tariff as amended. Reissue; effective August 24, 1914, in Supplement No. 2.</p>		
		Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

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## COMMODITY RATES.

Item No.	COMMODITIES	FROM	TO	Rates in Cents per 100 lbs.
	Carloads, * * *			*
2546a Can- cels 2546	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....	Reissue; effective August 24, 1914, in Supplement No. 2, except as noted. * Kiefer, Okla. *	Following points in Texas; * Port Arthur * West Port Arthur, Tex. (See Note A.)	33
	NOTE A.—Reissue; effective July 24, 1914, in Supplement No. 2.			

*Supplement No. 9 to I. C. C. No. 1048.* Cancels Supplements Nos. 7 and 8. Supplement No. 9 contains all changes from the original tariff that are effective on the date hereof.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 9.*

Cancels Supplements Nos. 7 and 8.

Supplement No. 9 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, pages 12 and 13 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 7 to 9 inclusive, herein.

Governed, except as otherwise provided herein, by Western Classification No. 52 (R. C. Fyfe's I. C. C. No. 10, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F' (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued November 17th, 1914. *Effective December 24th, 1914*; except as noted on page 27 where reference is made to

note B; page 40 where reference is made to note L; pages 34 to 37, inclusive; pages 41 to 43, inclusive; and in items 2622a, 2628a, 2634a, 2637a; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 22145.

(Stamped:) Public File. Received; Interstate Commerce Commission; 76815; Nov 18 1914; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
	Carloads, * * *	*	*
1536a cancels 1536	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification.

NOTE A.—Rates will not apply \* \* \* on the articles described in Items 2490 to 2546a, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of tariff as amended. Reissue; effective August 24, 1914, in Supplement No. 2.

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs
	* * * * *	* * * * *	* * * * *	*
2546a	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....	Reissue; effective August 24, 1914, in Supplement No. 2, except as noted.	Following points in Texas; * Port Arthur * West Port Arthur, Tex. (See Note A.)	33
2546	NOTE A.—Reissue; effective July 24, 1914, in Supplement No. 2.	* Kiefer, Okla. *		

*Supplement No. 10 to I. C. C. 1048.* Cancels Supplement No. 9. Supplement No. 10 contains all changes from the original tariff that are effective on the date hereof.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 10.*

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, pages 12 and 13 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 7 to 9 inclusive, herein.

Governed, except as otherwise provided herein, by Western Classification No. 52 (R. C. Fyfe's I. C. C. No. 10, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued November 30, 1914. *Effective January 5, 1915;* except as noted in items 1970a and 2950a; on page 33; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 22211.

(Stamped:) Public File. Received; Interstate Commerce Commission; 78200; Nov 28 1914; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536a cancels 1536	<b>OILS:</b> Petroleum Oil and its Products. * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules conditions and estimated weights provided in current Western Classification. ....





Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, and pages 12 and 13 of Supplement No. 10, and page 5 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, and pages 7 to 9 inclusive, of Supplement No. 10, and page 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued January 14, 1915. *Effective February 23, 1915*; except as noted in items 20a, 1536b, 2490b, 2496a, 2508a, 2511a, 2916b, 3024a and page 15; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 22388.

(Stamped:) Public File. Received; Interstate Commerce Commission; 8843; Jan 16 1915; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *

Effective January 23, 1915. Issued under special permission of the Interstate Commerce Commission No. 30563 of December 17th, 1914.

1536b cancels 1536a	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof. . . . .	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
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Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in Items 2490a to 2546a, \* \* \* or reissues thereof, from and to the points specified in said items, nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff as amended.

*Supplement No. 16 to I. C. C. No. 1048.* Cancels Supplements Nos. 9, except those portions under suspension; 14 and 15. Supplements Nos. 10 and 16 contains all changes from the original tariff that are effective on the date hereof. Supplement No. 11 suspends portions of Supplements Nos. 7 and 8. Supplement No. 12 suspends portions of Supplement No. 9. Supplement No. 13 suspends portions of Supplement No. 10.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 16.*

Cancels Supplements Nos. 9, except those portions under suspension; 14 and 15. Supplements Nos. 10 and 16 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 11 suspends portions of Supplements Nos. 7 and 8. Supplement No. 12 suspends portions of Supplement No. 9. Supplement No. 13 suspends portions of Supplement No. 10.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, and pages 12 and 13 of Supplement No. 10, and page 6 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, and pages 7 to 9, inclusive, of Supplement No. 10, and page 6 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

**Special Notice**—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued February 10, 1915. *Effective March 25, 1915;*

except as noted in items 1440a, 1446b, 1540, 1898, 1944b, 3028, 3030, 3032; in item 3024b where reference is made to note A; on pages 3 and 14 where reference is made to (43); and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 22512.

(Stamped:) Public File. Received; Interstate Commerce Commission; 19942; Feb 11 1915; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
No.	Carloads, * * *	*	

Reissue; effective January 23, 1915,  
in Supplement No. 14.

1536b can- cels 1536a	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
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Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \* \* \* on the articles described in Items 2490-a to 2546a, \* \* \* or reissues thereof, from and to the points specified in said items, nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff as amended.

*Supplement No. 18 to I. C. C. No. 1048.* Cancels Supplements Nos. 9, except those portions under suspension; and 17. Supplements Nos. 10, 16 and 18 contain all changes from the original Tariff that are effective on the date hereof. Supplement No. 11 suspends portions of Supplements Nos. 7 and 8. Supplement No. 12 suspends portions of Supplement No. 9. Supplement No. 13 suspends portions of Supplement No. 10.

### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

#### *Supplement No. 18.*

Cancels Supplements Nos. 9, except those portions under suspension; and 17. Supplements Nos. 10, 16 and 18 contain all changes from the original Tariff that are effective on the date hereof. Supplement No. 11 suspends portions of Supplements Nos. 7 and 8. Supplement No. 12 suspends portions of Supplement No. 9. Supplement No. 13 suspends portions of Supplement No. 10.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, tariff, and pages 12 and 13 of Supplement No. 10, and page 6 of Supplement No. 16, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, and pages 7 to 9 inclusive, of Supplement No. 10, and page 6 of Supplement No. 16.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject

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to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued February 17, 1915. *Effective March 28, 1915*; except as noted in item 1536c where reference is made to note C; in item 2496b where reference is made to note B; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.  
Authority No. 22537.

(Stamped:) Received; Interstate Commerce Commission; 22015; Feb 20 1915; Division of Tariffs.

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Page 5.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, \* \* \*.

Item	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
No.	Carloads, * * *	*	*

1536c cancels 1536b	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof . . . . .	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
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Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .



NOTE A.—Rates will not apply \* \* \* on the articles described in Items 2490c to 2546a, \* \* \*, or reissues thereof from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

*Supplement No. 19 to I. C. C. No. 1048.* Cancels Supplements Nos. 16 and 18. Supplements Nos. 10 and 19 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 11 suspends portions of Supplements Nos. 7 and 8. Supplement No. 12 suspends portions of Supplement No. 9. Supplement No. 13 suspends portions of Supplement No. 10.

### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

#### *Supplement No. 19.*

Cancels Supplements Nos. 16 and 18. Supplements Nos. 10 and 19 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 11 suspends portions of Supplement Nos. 7 and 8. Supplement No. 12 suspends portions of Supplement No. 9. Supplement No. 13 suspends portions of Supplement No. 10.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, and pages 12 and 13 of Supplement No. 10, and page 8 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, and pages 7 to 9 inclusive, of Supplement No. 10, and page 7 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority

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granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued March 26th, 1915. *Effective May 3rd, 1915*; except as noted in item 1536d where reference is made to note D; in item 2496c where reference is made to note C; in item 2511b where reference is made to note; in item 3024c where reference is made to note A; on page 20 where reference is made to note M; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 22621.

(Stamped:) Received; Interstate Commerce Commission; 29123; Mar 26 1915; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536d can- cels 1536c	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *: in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in Items 2490c to 2546a, \* \* \*, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

*Supplement No. 24 to I. C. C. No. 1048.* Cancels Supplements Nos. 10, except those portions under suspension; and 23. Supplements No. 19 and 24 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 20 suspends portions of Supplement No. 18. Supplement No. 21 suspends portions of Supplements Nos. 7, 8, 9 and 10. See page 2 of Supplement No. 20 for corrections affecting Supplement No. 19. See page 3 of Supplement No. 21 for corrections affecting Supplements Nos. 9 and 10.

#### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

##### *Supplement No. 24.*

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 8 of Supplement No. 19 and pages 14 and 15 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 7 of Supplement No. 19 and pages 9 to 11 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate

points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

**Special Notice**—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued May 18, 1915. *Effective June 24, 1915*; except as noted in items 1992b; in item 2010b; on page 14 where reference is made to (48); and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 22813.

(Stamped:) Received; Interstate Commerce Commission; 42683; May 22 1915; Division of Tariffs.

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# COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs.
2546a	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....	Reissue; effective August 24, 1914, in Supplement No. 2, except as noted.	Following points in Texas; * Port Arthur * West Port Arthur, Tex. (See Note A.)	33
2546	NOTE A.—Reissue; effective July 24, 1914, in Supplement No. 2.	Kiefer, Okla. *		

*Supplement No. 26 to I. C. C. No. 1048.* Cancels Supplement No. 25. Supplements Nos. 19, 24 and 26 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 20 suspends portions of Supplement No. 18. Supplement No. 21 suspends portions of Supplements Nos. 7, 8, 9 and 10. See page 2 of Supplement No. 20 for corrections affecting Supplement No. 19. See page 3 of Supplement No. 21 for corrections affecting Supplements Nos. 9 and 10.

#### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

##### *Supplement No. 26.*

Cancels Supplement No. 25. Supplements Nos. 19, 24 and 26 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 20 suspends portions of Supplement No. 18. Supplement No. 21 suspends portions of Supplements Nos. 7, 8, 9 and 10. See page 2 of Supplement No. 20 for corrections affecting Supplement No. 19. See page 3 of Supplement No. 21 for corrections affecting Supplements Nos. 9 and 10.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 8 of Supplement No. 19 and pages 14 and 15 of Supplement No. 24 and page 4 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 7 of Supplement No. 19 and pages 9 to 11 of Supplement No. 24, and page 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

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Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued June 16, 1915. *Effective July 24, 1915*; except as noted in individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 22930.

(Stamped:) Received; Interstate Commerce Commission; 48688; Jun 17, 1915; Division of Tariffs.

\* \* \* \* \*

Page 10. COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. *
* * *	* * *	* * *	* * *	* * *
2546b	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No.	* Okla. Kiefer.	Following points in Texas	
2546a	1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....		Port Arthur	
			West Port Arthur	33

*Supplement No. 27 to I. C. C. No. 1048.* Cancels Supplements Nos. 19 and 26. Supplements Nos. 24 and 27 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 20 suspends portions of Supplement No. 18. Supplement No. 21 suspends portions of Supplements Nos. 7, 8, 9 and 10. See page 2 of Supplement No. 20 for corrections affecting Supplement No. 19. See page 3 of Supplement No. 21 for corrections affecting Supplements Nos. 9 and 10.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 27.*

Cancels Supplements Nos. 19 and 26. Supplements Nos. 24 and 27 contain all changes from tariff that are effective on the date hereof. Supplement No. 20 suspends portions of Supplement No. 18. Supplement No. 21 suspends portions of Supplements Nos. 7, 8, 9 and 10. See page 2 of Supplement No. 20 for corrections affecting Supplement No. 19. See page 3 of Supplement No. 21 for corrections affecting Supplements Nos. 9 and 10.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, pages 14 and 15 of Supplement No. 24, and page 12 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 9 to 11 of Supplement No. 24, and page 12 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

**Special Notice**—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.



1008 GULF REFINING COMPANY, A CORPORATION, vs.

Issued July 20, 1915. *Effective September 1, 1915*; except as noted in item 2508c; and other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 23048.

(Stamped:) Received; Interstate Commerce Commission; 56905; Jul 20 1915; Division of Tariffs.

\* \* \* \* \*

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536e cancels 1536d	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in items \* \* \* 2546, \* \* \*, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

\*

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## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. *
	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....	*	Following points in Texas;	
2546b		Kiefer, Okla.	*	
Cancels			Port Arthur	33
2546a	1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....		*	
	Reissue; effective July 24, 1915, in Supplement No. 26.		West Port Arthur	

*Supplement No. 31 to I. C. C. No. 1048.* Cancels Supplements Nos. 24 and 30. Supplements Nos. 27 and 31 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 21 suspends portions of Supplements Nos. 7, 8, 9 and 10. Supplement No. 28 suspends portions of Supplement No. 9. Supplement No. 29 suspends portions of Supplement No. 18. See page 3 of Supplement No. 21 for corrections affecting Supplements Nos. 9 and 10.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 31.*

Cancels Supplements Nos. 24 and 30. Supplements Nos. 27 and 31 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 21 suspends portions of Supplements Nos. 7, 8, 9 and 10. Supplement No. 28 suspends portions of Supplement No. 9. Supplement No. 29 suspends portions of Supplement No. 18. See page 3 of Supplement No. 21 for corrections affecting Supplements Nos. 9 and 10.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 12 of Supplement No. 27 and pages 9 and 10 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 12 of Supplement No. 27 and pages 11 and 12 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

# 1010 GULF REFINING COMPANY, A CORPORATION, U.S.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued September 14, 1915. *Effective October 26, 1915*; except as noted in item 73 and on page 16 where reference is made to (95); and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 23259.

(Stamped:) Received; Interstate Commerce Commission; 67919; Sep 15 1915; Division of Tariffs.

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## COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536f cans	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed	Following points in Oklahoma	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
1536e		Kiefer	

in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A. — Rates will not apply on the articles described in items \* \* \* 2546, \* \* \*, or reissues thereof from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

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*Supplement No. 36 to I. C. C. No. 1048* Cancels Supplements Nos. 8 (see (102)); 9 (see (102)), except those portions as per Supplement No. 28; 10 (see (102)); 33 see (102)); and 35. Supplements Nos. 27, 31 and 36 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 28 suspends portions of Supplement No. 9. Supplement No. 29 suspends portions of Supplement No. 18. See page 2 herein for corrections affecting Supplement No. 9.

#### **SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

##### *Supplement No. 36.*

Cancels Supplements Nos. 8 (see (102)); 9 (see (102)), except those portions as per Supplement No. 28; 10 (see (102)); 33 see (102)); and 35. Supplements Nos. 27, 31 and 36 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 28 suspends portions of Supplement No. 9. Supplement No. 29 suspends portions of Supplement No. 18. See page 2 herein for corrections affecting Supplement No. 9.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 12 of Supplement No. 27, pages 9 and 10 of Supplement No. 31 and pages 5 to 7 herein, and points in Texas, also Texarkana, Tex.-Ark., named on

pages 43 to 62, inclusive, of tariff, page 12 of Supplement No. 27, pages 11 and 12 of Supplement No. 31 and pages 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued December 20, 1915. *Effective February 1, 1916*; except as noted above where reference is made to (102); in item 1536g, where reference is made to note E; in item 2916e; and in other individual items. For explanation of (102) see page 10 herein.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 23622.

(Stamped:) Received; Interstate Commerce Commission; 3618; Dec 21 1915; Division of Tariffs.

\* \* \* \* \*

Page 21.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. •
1536g cancels 1536f	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
	Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .		
	NOTE A.—Rates will not apply * * * on the articles described in items * * * 2546b, * * *, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended. •		

*Supplement No. 37 to I. C. C. No. 1048.* Cancels pages 34 to 37, inclusive, of Supplement No. 9 (see (107)); Supplements Nos. 28 (see (107)); and 36. This completes the cancellation of Supplement No. 9. Supplements Nos. 27, 31 and 37 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 29 suspends portions of Supplement No. 18.

## SOUTHWESTERN LINES' TARIFF NO. 26-1

For individual lines' Tariff numbers, see page 2.

*Supplement No. 37.*

Cancels pages 34 to 37, inclusive, of Supplement No. 9 (see (107)); Supplements Nos. 28 (see (107)); and 36. This completes the cancellation of Supplement No. 9. Supplements Nos. 27, 31 and 37 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 29 suspends portions of Supplement No. 18.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 12 of Supplement No. 27, pages 9 and 10 of Supplement No. 31 and pages 5 to 7 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 12 of Supplement No. 27, pages 11 and 12 of Supplement No. 31 and page 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued January 8, 1916. *Effective February 19, 1916*; except as noted above where reference is made to (107); on pages 18 to 21, inclusive; and in other individual items. For explanation of (107) see page 10 herein.



Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 23682.

(Stamped:) Received; Interstate Commerce Commission; 7489; Jan 8 1916; Division of Tariffs.

Page 25.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
	Carloads, * * *	*	
1536g cancels 1536f	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....</p> <p>Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .</p> <p>NOTE A.—Rates will not apply * * * on the articles described in items * * * 2546b, * * *, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, as amended. Reissue; * * * effective February 1, 1916, in Supplement No. 36.</p>		
		Following points in Oklahoma	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
		Kiefer	

Supplement No. 38 to I. C. C. No. 1048. Cancels Supplement No. 37. Supplements Nos. 27, 31 and 38 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 29 suspends portions of Supplement No. 18.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 38.*

Cancels Supplement No. 37. Supplements Nos. 27, 31 and 38 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 29 suspends portions of Supplement No. 18.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 12 of Supplement No. 27, pages 9 and 10 of Supplement No. 31 and pages 6 to 8 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 12 of Supplement No. 27, pages 11 and 12 of Supplement No. 31 and page 5 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued January 21, 1916. *Effective March 3, 1916*; except as noted on pages 3 and 10 where reference is made to (109); in (110); in item 2916f; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 23722.

(Stamped:) Received; Interstate Commerce Commission; 10050; Jan 22 1916; Division of Tariffs.

Page 32.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536g cancels 1536f	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....</p>		
		Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in items \* \* \* 2546b, \* \* \*, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

Reissue: \* \* \* effective Feb. 1, 1916, in Supplement No. 36.

Supplement No. 40 to I. C. C. No. 1048. Cancels Supplements Nos. 18, 27, 29 and 31. This completes the cancellation of Supplement No. 18. Supplements Nos. 38 and 40 contain all changes from the original tariff that are effective on the

date hereof. Supplement No. 38 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 39 for corrections affecting Supplements Nos. 37 and 38.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 40.*

Cancels Supplements Nos. 18, 27, 29 and 31. This completes the cancellation of Supplement No. 18. Supplements Nos. 38 and 40 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 39 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 39 for corrections affecting Supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 10 of Supplement No. 38 and page 26 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 9 of Supplement No. 38 and pages 19 to 21 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Inter-

state Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued March 21, 1916. *Effective May 2, 1916*; except as noted on page 54 where reference is made to note L; in items 1440d; in item 1536h where reference is made to note G; in item 1614a where reference is made to note A; in item 1944f; in item 2238 where reference is made to note A; in item 2496f where reference is made to note D; in item 2548a where reference is made to note C; in item 3021b where reference is made to note A; in item 3024e where reference is made to note B; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 23842.

(Stamped:) Received; Interstate Commerce Commission; 19841; Mar 22 1916; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM	TO Texas Groups Nos. 6 to 13  Rates in Cents per 100 lbs.
1536h cancels 1536g	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \* \* \* on the articles described in items \* \* \* 2546b \* \* \* or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in

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straight or mixed carloads, to points named on pages 170 to 174, inclusive of tariff, as amended.

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## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. *
	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....	Kiefer, Okla.	Following points in Texas;	
2546b			Port Arthur	33
2546a	1-F (F. A. Leland's I. C. C. No. 1026) or reissues.....		West Port Arthur	
	Reissue; effective July 24, 1915, in Supplement No. 26.			

*Supplement No. 42 to I. C. C. No. 1948.* Cancels Supplement No. 41. Supplements Nos. 38, 40 and 42 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 39 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 39 for corrections affecting Supplements Nos. 37 and 38.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

### *Supplement No. 42.*

Cancels Supplement No. 41. Supplements Nos. 38, 40 and 42 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 39 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 39 for corrections affecting Supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities, between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 10 of Supplement No. 38, page 26 of Supplement No. 40 and page 6 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 9 of Supplement No. 38, pages 19 to 21 of Supplement No. 40 and page 6 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues).

sues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued May 2, 1916. *Effective June 13, 1916*; except as noted on page 10 where reference is made to note L; in item 1480b where reference is made to note B; in item 1770a where reference is made to note B; in item 2142g where reference is made to note F; in item 2145c where reference is made to note C; in item 2496g where reference is made to note D; in item 3000b where reference is made to note A; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24023.

(Stamped:) Received; Interstate Commerce Commission; 28751; May 4 1916; Division of Tariffs.

\* \* \* \* \*



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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536l cancels 1536h	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....</p> <p>Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....</p> <p>NOTE A.—Rates will not apply * * * on the articles described in Items * * * 2546b * * *, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174 inclusive of tariff as amended.</p>		<p>Following points in Oklahoma * Kiefer * Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13</p>

*Supplement No. 44 to I. C. C. No. 1048.* Cancels Supplement No. 42. Supplements Nos. 38, 40 and 44 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 44.*

Cancels Supplement No. 42. Supplements Nos. 38, 40, and 44 contain all changes from the original tariff that are

effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 10 of Supplement No. 38, page 26 of Supplement No. 40 and page 6 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 9 of Supplement No. 38, pages 19 to 21 of Supplement No. 40 and page 5 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued May 22nd, 1916. *Effective July 2nd, 1916*; except as noted in item 20b where reference is made to note A; in items 2145d, 3019c and 3022½a, and pages 16 and 35; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24100.

(Stamped:) Received; Interstate Commerce Commission; 32466; May 23 1916; Division of Tariffs.

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## COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536i cans 1536h	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....</p> <p>Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .</p> <p>NOTE A.—Rates will not apply * * * on the articles described in Items * * * 2546b, * * *, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.</p>	<p>Following points in Oklahoma * Kiefer *</p>	<p>Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13</p>

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## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. * *
2546c Cans 2546b	<p>OILS:</p> <p>Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues.....</p>	<p>* Okla. Kiefer"</p>	<p>Following points in Texas * Port Arthur West Port Arthur</p>	<p>33</p>

*Supplement No. 45 to I. C. C. No. 1048.* Cancels Supplement No. 44. Supplements Nos. 38, 40 and 45 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

### **SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

#### *Supplement No. 45.*

Cancels Supplement No. 44. Supplements Nos. 38, 40 and 45 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 10 of Supplement No. 38, page 26 of Supplement No. 40 and page 6 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 9 of Supplement No. 38, pages 19 to 21 of Supplement No. 40 and page 5 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter dis-

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tances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued May 29th, 1916. *Effective July 12th, 1916*; except as noted in item 1770b where reference is made to note C; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24130.

(Stamped:) Received; Interstate Commerce Commission; 33773; May 29 1916; Division of Tariffs.

\* \* \* \* \*

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
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1536l cancels 1536h	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof . . . . .	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
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Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in Items \* \* \* 2546b, \* \* \*, or reissues thereof, from and to the points specified in said items, nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff as amended.

Reissue; effective  
June 13th, 1916, in  
Supplement No. 42.

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## COMMODITY RATES.

Item No.	COMMODITIES Carloads, ***	FROM	TO	Rates in Cents per 100 lbs.
OILS:				
2546c	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues.....	• Kiefer Okla. •	Following points in Texas • Port Arthur • West Port Arthur	33
Reissue; effective July 2, 1916, in Supplement No. 44.				

*Supplement No. 46 to I. C. C. No. 1948.* Cancels Supplement No. 45. Supplements Nos. 38, 40 and 46 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 46.*

Cancels Supplement No. 45. Supplements Nos. 38, 40 and 46 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 10 of Supplement No. 38, page 26 of Supplement No. 40 and page 6 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, page 9 of Supplement No. 38, pages 19 to 21 of Supplement No. 40 and page 5 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued June 8th, 1916. *Effective July 20, 1916*; except as noted in individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24152.

(Stamped: ) Received; Interstate Commerce Commission; 36004; Jun 10 1916; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*

Item No.	COMMODITIES Carloads, * * *	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536l cancels 1536h	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Cir-	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13



cular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \* \* \* on the articles described in Items \* \* \* 2546b, \* \* \*, or reissues thereof, from to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of Tariff, as amended.

Reissue; effective June 13th, 1916, in Supplement No. 42.

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#### COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. •
<b>OILS:</b>				
2546c	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No.	• Kiefer, Okla.	Following points in Texas; •	
2546b	1-G (F. A. Leland's I. C. C. No. 1137), or reissues. ....		Port Arthur	33
	Reissue; effective July 2, 1916, in Supplement No. 44.		West Port Arthur.	

*Supplement No. 47 to I. C. C. No. 1048* Cancels Supplements Nos. 38, except those portions under suspension; and 46. Supplements Nos. 40 and 47 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

#### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

#### *Supplement No. 47.*

Cancels Supplements Nos. 38, except those portions under suspension; and 46. Supplements Nos. 40 and 47 contain

all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 26 of Supplement No. 40 and page 12 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 19 to 21 of Supplement No. 40 and page 11 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued June 21, 1916. *Effective August 2, 1916*; except as noted on pages 3 and 11 where reference is made to (119); on page 27 where reference is made to note O; on page 34 where reference is made to note 4; in item 1896b where reference is made to note A; in item 2292b where reference is made to note A; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24153.

(Stamped:) Received; Interstate Commerce Commission; 38214; Jun 23 1916; Division of Tariffs.

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
15361 cans 15362	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof.....</p> <p>Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification.....</p> <p>NOTE A.—Rates will not apply * * * on the articles described in Items * * * 2546b, * * *, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of tariff as amended.</p>		<p>Following points in Oklahoma * Kiefer * Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13</p>

Reissue; effective  
June 13th, 1916, in  
Supplement No. 42.

Page 70.

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. *
* * * * *				
OILS				
2546c Cans 2546b	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues, .....	* Kiefer, Okla. *	Following points in Texas; * Port Arthur * West Port Arthur.	33
Reissue; effective July 2, 1916, in Supplement No. 44.				

*Supplement No. 48 to I. C. C. No. 1048.* Supplements Nos. 40, 47 and 48 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 48.*

Supplements Nos. 40, 47 and 48 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 26 of Supplement No. 40 and page 12 of Supplement No. 47, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 19 to 21 of Supplement No. 40 and page 11 of Supplement No. 47.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter dis-

tances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued June 30, 1916. *Effective August 10, 1916*; except as noted on page 3 where reference is made to note P; and in items 1536j, 2490e, 2496h, 2498; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.  
Authority No. 24235.

(Stamped:) Received; Interstate Commerce Commission; 39915; Jul 1 1916; Division of Tariffs.

\* \* \* \* \*

Page 4.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, \* \* \*.

Item No.	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
	Carloads, * * *	*	*

Effective July 16, 1916. Issued under special permission of the Interstate Commerce Commission No. 37969 of June 16, 1916.

OILS: Petroleum Oil and its Products, \* \* \* listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; \* \* \*; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof. ....

Following points in Oklahoma	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
Kiefer	
*	

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \* \* \* on the articles described in Items

1536j  
can-  
cels  
1536l

2546c \* \* \* or reissues thereof from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

*Supplement No. 49 to I. C. C. No. 1048.* Cancels Supplement No. 48. Supplements Nos. 40, 47 and 49 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

#### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

##### *Supplement No. 49.*

Cancels Supplement No. 48. Supplements Nos. 40, 47 and 49 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 43 suspends portions of Supplements Nos. 36, 37 and 38. See page 2 of Supplement No. 43 for corrections affecting Supplements Nos. 37 and 38.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 26 of Supplement No. 40, page 12 of Supplement No. 47 and page 3 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 19 to 21 of Supplement No. 40 and page 11 of Supplement No. 47 and page 3 herein.

Governed, except as otherwise provided herein, by Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued July 13, 1916. *Effective August 24, 1916*; except as noted in individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24268.

(Stamped:) Received; Interstate Commerce Commission; 42072; Jul 14 1916; Division of Tariffs.

\* \* \* \* \*

Page 5.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536j cancels 1536i	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *: in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....		Following points in Oklahoma * Kiefer * Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....



NOTE A.—Rates will not apply \* \* \* on the articles described in Items \* \* \* 2546c, \* \* \*, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

Reissue; \* \* \* effective July 16, 1916, in Supplement No. 48.

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*Supplement No. 50 to I. C. C. 1048.* (120) Cancels rates set forth in Supplements 36 and 37 on Cement named on page 16 in note F and item 1440b, and Supplement No. 38 on Cement on page 17 in note F and item 1440c; also Supplements Nos. 43 and 49. Note—This completes the cancellation of Supplements Nos. 36, 37 and 38. Supplements Nos. 40, 47 and 50 contain all changes from the original tariff that are effective on the date hereof.

#### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

##### *Supplement No. 50.*

(120) Cancels rates set forth in Supplements 36 and 37 on Cement named on page 16 in note F and item 1440b, and Supplement No. 38 on Cement on page 17 in note F and item 1440c; also Supplements Nos. 43 and 49. Note—This completes the cancellation of Supplements Nos. 36, 37 and 38. Supplements Nos. 40, 47 and 50 contain all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 26 of Supplement No. 40, page 12 of Supplement No. 47 and page 6 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 19 to 21 of Supplement No. 40, page 11 of Supplement No. 47 and page 5 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues

thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

**Special Notice**—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued August 2, 1916. *Effective September 15, 1916*; except as noted above where reference is made to (120); on page 18 where reference is made to note P; in item 2744; and in other individual items. For explanation of (120) see page 6.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24287.

(Stamped:) Received; Interstate Commerce Commission; 45928; Aug 4 1916; Division of Tariffs.

Page 30.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*

Item	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
No.	Carloads, * * *	*	*
1536k cans- cels 1536j	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed	Following points in Oklahoma * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 6 to 10, inclusive, and Group 13

in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof. ....

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \* \* \* on the articles described in Item 2546c, \* \* \*, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of tariff as amended.

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*Supplement No. 52 to I. C. C. No. 1048. Cancels Supplements Nos. 47; and 50, except those portions under suspension. Supplements Nos. 40 and 42 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.*

#### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

#### *Supplement No. 52.*

Cancels Supplements Nos. 47; and 50, except those portions under suspension. Supplements Nos. 40 and 52 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 26 of Supplement No. 40 and page 16 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 19 to 21 of Supplement No. 40 and pages 13 and 14 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued October 6, 1916. *Effective November 16, 1916*; except as noted on page 40 where reference is made to note P; in item 2468b; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24435.

(Stamped:) Received: Interstate Commerce Commission; 57675; Oct 7 1916; Division of Tariffs.

Page 58.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536l cancels 1536k	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines'	Following points in Oklahoma * Cushing * Jenks * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof. ....

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \* \* \* on the articles described in Items 2546c \* \* \*, or reissues thereof, from and to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of tariff as amended.

Page 94.

COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. •
	OILS			
2546c	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern	•	Following	
Can-	Lines' Classification Exceptions and Rules-Circular No.	Kiefer, Okla.	points in	
cels	1-G (F. A. Leland's I. C. C. No.	•	Texas;	
2546b	1137) or reissues.....		•	
			Port Arthur	33
			•	
			West Port	
			Arthur	
	Reissue; effective July 2,			
	1916, in Supplement No. 44.			

*Supplement No. 53 to I. C. C. No. 1048.* Supplements Nos. 40, 52 and 53 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 53.*

Supplements Nos. 40, 52 and 53 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

Local, joint and proportional tariff, applying on classes

and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 26 of Supplement No. 40, page 16 of Supplement No. 52 and page 5 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 19 to 21 of Supplement No. 40, pages 13 and 14 of Supplement No. 52 and page 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued October 20, 1916. *Effective December 2, 1916*; except as noted on page 2 where reference is made to (124); on pages 6 and 7; in items 1488; 1536m, 2486a, 2496k, 3019f and 3022½d; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24574.

(Stamped:) Received; Interstate Commerce Commission; 59859; Oct 21 1916; Division of Tariffs.

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Page 2.

## PARTICIPATING CARRIERS

Railway Abbreviations	NAMES OF CARRIERS * * *	Under Powers of Attorney
		to F. A. Leland From FX 1 No.
St. L. & S. F.	St. Louis & San Francisco R. R. Co. James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.	100

Page 10.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
No.	Carloads, * * *	*	

1536m cancels 1636L	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....	Following points in Oklahoma * Cushing * Jenks * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
---------------------------	---	--	---

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

NOTE A.—Rates will not apply \* \* \* on the articles described in Items \* \* \* 2546c \* \* \*, or reissues thereof, from and to the points specified in said items, nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff as amended.



Page 20.

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM * * *	TO * * *	Rates in Cents per 100 lbs. *
3023½	<b>OIL:</b> Unrefined Naphtha in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-J, E. B. Boyd's I. C. C. A-623), or reissues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum.	Kiefer *	Okla. " Port Arthur, Tex.	19½
			Stations on the T. & N. O. R. R., viz.: *** Elvista to Wantmore Jct. Tex (Indices 5840 to 6029, inclusive)	
* * *	* * *	* * *	* * *	* * *

*Supplement No. 54 to I. C. C. No. 1048.* Cancels Supplements Nos. 40 and 53. Supplements Nos. 52 and 54 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 54.*

Cancels Supplements Nos. 40 and 53. Supplements Nos. 52 and 54 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 16 of Supplement No. 52 and page 24 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 13 and 14 of Supplement No. 52 and pages 17 to 20 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued November 21, 1916. *Effective January 2, 1917*; except as noted on page 24 where reference is made to note A; on page 44 where reference is made to note P; in item 1536n where reference is made to note I; in item 2496-I where reference is made to note E; in item 3022 $\frac{1}{2}$ e where reference is made to note E; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24654.

(Stamped:) Received; Interstate Commerce Commission; 65553; Nov 23 1916; Division of Tariffs.

\* \* \* \* \*

Page 3.

# PARTICIPATING CARRIERS.

Railway		NAMES OF CARRIERS * * *				Under Powers of Attorney to F. A. Leland Form FX 1 No.	
Abbreviations							
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
St. L.-S. F.....	St. Louis-San Francisco Ry.....					100	*
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *

NOTE.—Rates and routes published in this tariff, as amended, to or from stations on the St. Louis and San

Francisco R. R. will apply as being  
stations on the St. Louis-San Fran-  
cisco Ry.

St. L. S. F. & T...St. Louis, San Francisco and Texas Ry.  
Co. .... 23 Corrected ..

Pages 54 and 55.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
1536n can- cels 1536m	OILS: Petroleum Oil and its Pro- ducts, * * * listed under head of "Pe- troleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Cir- cular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....	Following points in Oklahoma * Cushing * Jenks * Kiefer *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the  
contrary in this tariff or in Southwest-  
ern Lines' Classification Exceptions and  
Rules-Circular No. 1-G (F. A. Leland's I.  
C. C. No. 1137), or reissues thereof, ship-  
ments of petroleum oil and its products  
specified in this item will be subject to  
the rules, conditions and estimated  
weights provided in current Western  
Classification. . . . .

NOTE A.— Rates will not apply \* \* \*  
on the articles described in Items \* \* \*  
2546c \* \* \*, or reissues thereof, from  
and to the points specified in said items;  
nor on crude and fuel petroleum oil, in  
straight or mixed carloads, to points  
named on pages 170 to 174, inclusive, of  
Tariff, as amended.

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM * * *	TO * * *	Rates in Cents per 100 lbs.
	<b>OILS:</b>		Okla.	
	Unrefined Naphtha, in tank cars, minimum weight full-	Kiefer	"	
3023½	A shell capacity of the tank (as		Port Ar-	
3023½	cancels shown in United States and		thur, Tex.	
	Canadian Railroads' Circular		*	
	No. 6-K, E. B. Boyd's I. C. C.		Stations on	19½
	A-722), or reissues, at estimat-		the T. & N. O.	
	ed weight of 6.6 pounds per		R. R., viz.:	
	gallon, unless the weight carry-		*** Elvista to	
	ing capacity of the car		Wantmore Jct.,	
	trucks is less, in which case		Tex. (Indices	
	the actual weight subject to		5840 to 6209),	
	the weight carrying capacity		inclusive.	
	of the car trucks will govern			
	as minimum.			
	* * * * *			

*Supplement No. 56 to I. C. C. No. 1048* Cancels Supplement No. 55. Supplements Nos. 52, 54 and 56 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 56.*

Cancels Supplement No. 55. Supplements Nos. 52, 54 and 56 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 16 of Supplement No. 52, and page 24 of Supplement No. 54, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 13 and 14 of Supplement No. 52 and pages 17 to 20 of Supplement No. 54.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued December 5, 1916. *Effective January 16, 1917*; except as noted on page 3 where reference is made to note R; in item 1536o where reference is made to note J; in item 2496m where reference is made to note F; in item 3019g where reference is made to note B; in item 3026e where reference is made to note A; and in other individual items.

Issued by F. A. Leland, agent, St. Louis, Mo.

Authority No. 24749.

(Stamped:) Received; Interstate Commerce Commission; 897; Dec 6 1916; Division of Tariffs.

Page 3.

GEOGRAPHICAL LIST OF OKLAHOMA POINTS FROM AND TO WHICH  
RATES APPLY.

INDEX NOS.	STATIONS ON	GROUP BASES
9193	Mid. Val. R. R. Kiefer	See Items 1536o *** 3023½a ***.

Page 5.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
No.	Carloads, * * *	*	*
1536o cancels 1536n	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....	Following points in Oklahoma * Cushing * Jenks * Kiefer (Mid. Val. R. R.) (See Note J.) Kiefer (St. L.-S. F. Ry.) *	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in items \* \* \* 2546c \* \* \* or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, as amended. Reissue; \* \* \* effective February 1, 1916, in Supplement No. 36.

NOTE J.—Effective December 16, 1916. Issued under authority of Rule 57, Interstate Commerce Commission Tariff Circular No. 18-A, account of new station on newly constructed extension of Mid. Val. R. R., from which no rates have hitherto applied. Rates apply only on shipments transported in tank cars.

*Supplement No. 57 to I. C. C. No. 1048.* Cancels Supplement No. 56. Supplements Nos. 52, 54 and 57 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 57.*

Cancels Supplement No. 56. Supplements Nos. 52, 54 and 57 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 51 suspends portions of Supplement No. 50.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 16 of Supplement No. 52, and page 24 of Supplement No. 54 and page 5 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 13 and 14 of Supplement No. 52 and pages 17 to 20 of Supplement No. 54 and page 4 herein

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued December 20, 1916. *Effective February 1, 1917*; except as noted on page 2 where reference is made to note A;



1050 GULF REFINING COMPANY, A CORPORATION, vs.

in (129), page 5; in item 1536p; in item 2496n; pages 39, 40, 41, 43, 44 where reference is made to note H; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24775.

(Stamped:) Received; Interstate Commerce Commission; 3848; Dec 22 1916; Division of Tariffs.

Page 5.

GEOGRAPHICAL LIST OF OKLAHOMA POINTS FROM AND TO WHICH RATES APPLY.

INDEX NOS.	STATIONS ON	GROUP BASES
9193	Mid. Val. R. R. Kiefer	See Items 1536p *** 3023½a ***.

Page 48.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
-------------	--------------------------------	-----------	--

Effective February 16, 1917.

1536p can- cels 1536o	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....	Following points in Oklahoma * Cushing * Jenks * Kiefer (Mid. Val. R. R.) (See Note 1) Kiefer (St. L.-S. F. Ry.)	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
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Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in items \* \* \*

2546c \* \* \*, or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive, of Tariff, as amended.

NOTE 1. Rates apply only on shipments transported in tank cars.

*Supplement No. 59 to I. C. C. No. 1048.* Cancels Supplement No. 57. Supplements Nos. 52, 54 and 59 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50.

### SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

#### *Supplement No. 59.*

Cancels Supplement No. 57. Supplements Nos. 52, 54 and 59 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 16 of Supplement No. 52, and page 24 of Supplement No. 54 and page 5 herein, and points in Texas, also Texarkana, Tex.Ark., named on pages 43 to 62, inclusive, of tariff, pages 13 and 14 of Supplement No. 52 and pages 17 to 20 of Supplement No. 54 and page 4 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued January 2, 1917. *Effective February 14, 1917*; except as noted on pages 38 to 44, inclusive, where reference is made to (133); on page 46 where reference is made to note A; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24838.

(Stamped:) Received; Interstate Commerce Commission; 5702; Jan 4 1917; Division of Tariffs.

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GEOGRAPHICAL LIST OF OKLAHOMA POINTS FROM AND TO WHICH  
RATES APPLY.

INDEX NOS.	STATIONS ON	GROUP BASES
	Mid. Val. R. R.	See Items 1536p ***
9193	Kiefer	3023½a ***.
	Reissue; effective Feb. 1, 1917, in Supplement No. 57.	

Page 48.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13  Rates in Cents per 100 lbs. *
1536p can- cels 1536o	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....</p>		
		Following points in Oklahoma	Rate of 39 cents per 100 pounds will apply to Groups 5 to 10, inclusive, and Group 13
		Cushing	
		Jenks	
		Kelfer, (Mid. Val. R. R.) (See Note I)	
		Kiefer, (St. L. S. F. Ry.)	

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification.....

NOTE A.—Rates will not apply \* \* \* on the articles described in Items \* \* \* 2546c, \* \* \* or reissues thereof, from and to the points specified in said items; nor on crude and fuel petroleum oil, in straight or mixed carloads, to points named on pages 170 to 174, inclusive of tariff, as amended.

Reissue; \* \* \* effective Feb. 16, 1917, in Supplement No. 57.

(NOTE I. Rates apply only on shipments transported in tank cars.)

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. •
	OIL:		Okla.	
	Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. A-722), or reissues at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum.	Kiefer	" Port Arthur, Tex.	19½
3023½b			Stations on the T. & N. O. R. R., viz., *** Elvita to Wantmore Jet., Tex. (indices 5840 to 6029) inclusive.	
3023½a				
•	•	•	•	•

*Supplement No. 60 to I. C. C. No. 1048.* Cancels Supplements Nos. 52 and 59. Supplements Nos. 54 and 60 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50.

## SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

*Supplement No. 60.*

Cancels Supplements Nos. 52 and 59. Supplements Nos. 54 and 60 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 24 of Supplement No. 54, and page 17 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 17 and 20 of Supplement No. 54 and pages 14 and 15 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued January 20, 1917. *Effective March 3, 1917*; except as noted on page 17 where reference is made to note A; on page 54 where reference is made to note A; on page 56; on page 63 where reference is made to note A; on page 64 where reference is made to note L; on page 64 where reference is made to note 3; on page 65 where reference is made to note C; on page 65 where reference is made to note S; in item 71; in item 1536q where reference is made to note J; in item 1844a where reference is made to note A; in item 2496o where reference is made to note F; in item 2508h where reference is made to note 2; in item 30221½g where reference is made to note F; in item 3023f where reference is made to note C; in item 30231½c where reference is made to note A; in item 3024h where reference is made to note C; in item 3026f where reference is made to note A; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24859.

(Stamped:) Received; Interstate Commerce Commission; 8024; Jan 19 1917; Division of Tariffs.

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# 1056 GULF REFINING COMPANY, A CORPORATION, U.S.

Page 3.

## PARTICIPATING CARRIERS.

Railway Abbreviations	NAMES OF CARRIERS * * *	Under Powers of Attorney to F. A. Leland Form FX 1 No.
St. L.-S. F.....	St. Louis-San Francisco Ry.....	137 ***
NOTE.—Rates and routes published in this tariff, as amended, to or from stations on the St. Louis and San Francisco R. R. will apply as being stations on the St. Louis-San Fran- cisco Ry.		
St. L. S. F. & T....	St. Louis, San Francisco and Texas Ry. Co. ....	30 ***

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## GEOGRAPHICAL LIST OF OKLAHOMA POINTS FROM AND TO WHICH RATES APPLY.

INDEX NOS.	STATIONS ON	GROUP BASES
9193	Mid. Val. R. R. Kiefer	See Items 1536p *** 3023 1/2a ***; 2546d

Page 81.

## COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
1536q can- 1536p cels	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 shipments transported in tank cars will pounds, except that freight charges on be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....	Following points in Oklahoma * Cushing * Jenks * Kiefer (Mid. Val. R. R.) (See Note I) Kiefer (St. L. S. F. Ry.) *	Rate of 39 cents per 100 pounds will apply to Groups 6 to 10, inclusive, and Group 13

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof, shipments of petroleum oil and its products



specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

NOTE A.—Rates will not apply \* \* \* on the articles described in Items \* \* \* 2546c \* \* \*, or reissues thereof, from to the points specified in said items nor on crude and fuel petroleum oil, in straight or mixed carloads to points named on pages 170 to 174, inclusive, of Tariff, as amended.

NOTE I.—Rates apply only on shipments transported in tank cars.

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### COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs.
OILS:				
1546d	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues.....	* Kiefer,	Okla. Following points in Texas * Port Arthur * West Port Arthur	33

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### COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs.
OILS:				
3023½c	Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. A-722), or reissues at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum.	Okla. Jenks (Note A) Kiefer	Port Arthur, Tex. * Stations on the T. & N. O. R. R., viz., ***Elvista to Wantmore Jct., Tex. (indices 5840 to 6029) inclusive.	19½

NOTE A.—Effective February 3, 1917. Issued under authority of Rule 77(a) of Interstate Commerce Commis-

sion Tariff Circular No. 18-A.  
The rate from the more distant point appears in Southwestern Lines' Tariff No. 26-T (F. A. Leland's I. C. C. No. 1048), Supplement No. 59 Item No. 3023½b.

*Supplement No. 63 to I. C. C. No. 1048.* Cancels Supplements Nos. 54 and 62. Supplements Nos. 60, 61 and 63 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50. Supplement No. 61 suspends portions of Supplements Nos. 57, 59 and 60.

# SOUTHWESTERN LINES' TARIFF NO. 26-T

For individual lines' Tariff numbers, see page 2.

## *Supplement No. 63.*

Cancels Supplements Nos. 54 and 62. Supplements Nos. 60, 61 and 63 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50. Supplement No. 61 suspends portions of Supplements Nos. 57, 59 and 60.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive of tariff, page 17 of Supplement No. 60, and page 25 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 14 and 15 of Supplement No. 60, and pages 18 to 21 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

**Special Notice**—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued February 21, 1917. *Effective April 2, 1917*; except as noted in individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24991.

(Stamped:) Received; Interstate Commerce Commission; 13557; Feb 21 1917; Division of Tariffs.

\* \* \* \* \*

Page 95.

# COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM * * *	TO	Rates in Cents per 100 lbs. *
	OIL:		Okla.	
3023½d can- cels 3023½c	Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. A-722), or reissues at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum.	Jenks. . . ." Kiefer. . . ."	Port Arthur, Tex. * Stations on the T. & N. O. R. R., viz., 19½ ***Elvita to Wantmore Jct., Tex. (indices 5840 to 6029) inclusive.	
	* * * * *			

*Supplement No. 64 to I. C. C. No. 1048.* Supplements Nos. 60, 61, 63 and 64 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50. Supplement No. 61 suspends portions of Supplements Nos. 57, 59 and 60.

**SOUTHWESTERN LINES' TARIFF NO. 26-T**

For individual lines' Tariff numbers, see page 2.

*Supplement No. 64.*

Supplements Nos. 60, 61, 63 and 64 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 58 suspends portions of Supplement No. 50. Supplement No. 61 suspends portions of Supplements Nos. 57, 59 and 60.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 76 to 82, inclusive, of tariff, page 17 of Supplement No. 60, page 25 of Supplement No. 63, and page 5 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 43 to 62, inclusive, of tariff, pages 14 and 15 of Supplement No. 60, pages 18 to 21 of Supplement No. 63 and page 5 herein.

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No 12, or reissues thereof; and Southwestern Lines' Classification exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

Special Notice—The rates named in this Tariff are subject to the conditions of the Carriers' Bill of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Order (or Orders), as indicated in individual items herein.

Issued March 22, 1917. *Effective May 2, 1917.* (Except as noted in items 1966a, 2496p, 2874i and 2876f.)

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25058.

(Stamped:) Received; Interstate Commerce Commission; 18992; Mar 23 1917; Division of Tariffs.

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### EXPLANATION OF CHARACTERS.

Characters:

Explanation.

(136)

For rates, rules and regulations on Petroleum and Petroleum Products, Asphalt and Asphalt Rock, from Oklahoma Producing Points, see Southwestern Lines' Tariff No. 79 (F. A. Leland's I. C. C. No. 1136.)

Page 13.

### COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES Carloads, * * *	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
1536r cancels 1536q	OILS: Petroleum and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137), or reissues thereof.....	Points in Oklahoma	Cancel see (136).

Page 28.

### COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs. *
2546e Cancels 2546d	OIL: Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-G (F. A. Leland's I. C. C. No. 1137) or reissues.....	* Okla. Kiefer, " *	Following points in Texas: * Port Arthur.. * West Port Ar- thur *	Cancel. (See (136).

For explanation of Characters, see \* \* \* pages \* \* \* 7 herein.

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates
	<b>OIL</b>			
3023½e	Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. A-722), or reissues at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum.	Points in Oklahoma	Points in Tex... ***	Cancel see (136)
3023½d				
*	*	*	*	*
For explanation of Characters, see pages * * * 6 and 7 herein.				
*	*	*	*	*

**Government's Exhibit 37.**

Only three supplements to this classification will be in effect at any time.

C. R. C. No. 10 (Cancels C. R. C. No. 9 and Supplements).  
I. C. C. No. 12 (Cancels I. C. C. No. 11 and Supplements).  
P. S. C. Mo. No. 3 (Cancels P. S. C. Mo. No. 2 and Supplements); P. U. C. Colo. No. 3 (Cancels P. U. C. Colo. No. 2 and Supplements); P. S. C. Wyoming No. 2 (Cancels P. S. C. Wyoming No. 1 and Supplements); P. U. C. Idaho No. 2 (Cancels P. U. C. Idaho No. 1 and Supplements); Illinois P. U. C. No. 1—Corporation Commission Oklahoma No. 1.

**THE WESTERN CLASSIFICATION NO. 54.**

(Cancels the Western Classification No. 53 and Supplements.)

Applying on Freight Traffic covered by Tariffs issued subject thereto.

Issued July 15, 1916—*Effective September 1, 1916.*

Issued and filed with the Interstate Commerce Commission by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

Issued and filed with the Board of Railway Commissioners for Canada by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

Issued and filed with the Public Service Commission of Missouri by R. C. Fyfe, as Agent for Missouri lines.

Issued and filed with the Public Utilities Commission of Colorado by R. C. Fyfe, as Agent for Colorado lines.

Issued and filed with the Public Service Commission of Wyoming by R. C. Fyfe, as Agent for Wyoming lines.

Issued and filed with the Public Utilities Commission of Idaho by R. C. Fyfe, as Agent for Idaho lines.

Issued and filed with the Illinois Public Utilities Commission by R. C. Fyfe, as Agent for Illinois lines.

Issued and filed with the Corporation Commission of Oklahoma by R. C. Fyfe, as Agent for Oklahoma lines.

The Western Classification Committee. Transportation Building, Chicago, R. C. Fyfe, Chairman. Copyright, 1916, by R. C. Fyfe, Chairman.

(Stamped:) Received; Interstate Commerce Commission; 40799; Jul 7 1916; Division of Tariffs. Cancelled by-I. C. C. No. 13; Effective 4-1-18.

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# TABLE OF CONTENTS OF THE WESTERN CLASSIFICATION NO. 54, I. C. C. No. 12.

Subject	Page No.
Index to Rules . . . . .	xii to xiv
Index to Articles . . . . .	xv to c
Rules and Conditions . . . . .	1 to 96

*Pages i, iv, v, & vii.*

This Classification is filed with the Interstate Commerce Commission by R. C. Fyfe, Chicago, Ill., as agent for the following lines:

Atehison, Topeka & Santa Fe Ry. . . . .	FX1 No. 63,
Gulf, Colorado & Santa Fe Ry. . . . .	FX1 No. 40,
Houston & Texas Central R. R. . . . .	FX1 No. 23



Kansas City Southern Ry. ....	FX1 No. 34
•	•
Midland Valley R. R. ....	FX1 No. 26
•	•
St. Louis & San Francisco R. R. (James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers). ....	FX1 No. 95
•	•
Texarkana & Ft. Smith Ry. ....	FX1 No. 28
•	•
Texas & New Orleans R. R. ....	FX1 No. 22.
•	•

*Pages xii, xiii, and xiv*

### INDEX TO RULES.

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•	•	•
Commodities in Tank Cars. ....	32	15
•	•	•
Dangerous Articles other than explosives. ....	44	48
•	•	•
Inflammable articles . ....	44	48
•	•	•
Transportation of Dangerous Articles other than explosives . ....	44	48

*Pages 1 and 15*

### RULES AND CONDITIONS OF THE WESTERN CLASSIFICATION.

•   •   •   •   •   •   •   •

#### RULE 32.

•

SECTION 4. When shipments of inflammable liquids subject to Section 1825, Rule 44, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank to cover the difference between the dome capacity and the two (2) per cent outage.

Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

•   •   •   •   •   •   •   •

## RULE 44.

*Interstate Commerce Commission*

## REGULATIONS

for the

*Transportation of Dangerous Articles Other Than  
Explosives by Freight.*

Prescribed under the act of March 4, 1909, and section 15 of the act to regulate commerce, as amended June 18, 1910. Revision formulated and published July 2, 1914, effective October 1, 1914, and superseding regulations published January 1, 1912.

## GENERAL NOTICE.

1701. Special precautions are necessary in preparing for shipment packages of dangerous articles other than explosives, and in handling these packages during transit. Any failure of a shipper, or of a carrier, to perform the duties imposed upon him in this respect may be the actual or a contributory cause not only of destructive fires but of disastrous explosions, since large quantities of explosives are transported frequently through thickly populated districts and in trains containing cars loaded with other dangerous articles.

1702. Sections 235 and 236 of the act of March 4, 1909, require the shipper of dangerous articles to describe and mark his packages properly and to inform the agent of the carrier of the true character of their contents. Heavy penalties are provided for the shipper who, knowingly, solicits the transportation of dangerous articles without complying with these requirements, as well as for the carrier that knowingly transports them.

1703. To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation by land in interstate commerce of dangerous articles other than explosives, the following regulations are prescribed to define these articles for freight transportation purposes, to state the precautions that must be observed by the shipper in preparing them for shipment, and by the carrier in handling them while in transit. It is the duty of each such carrier and shipper to make the prescribed regulations effective and to thoroughly instruct their employees in relation thereto.

1704. These regulations apply to all shipments of dangerous articles other than explosives, including carriers' material and supplies.

1705. Specifications as to containers, methods of packing for shipment, etc., will be considered and prescribed from time to time. Orders prescribing such specifications will be given effective dates as conditions and investigations may appear to warrant.

1706. The Bureau for the Safe Transportation of Explosives and other Dangerous Articles, hereinafter called Bureau of Explosives, organized by the railways under the auspices of the American Railway Association, is an efficient bureau in charge of an expert chief inspector. This bureau will make inspections and conduct investigations and will confer with manufacturers and shippers with a view to determining what specifications and regulations will within reasonable limits afford the highest degree of safety in packing and preparing these dangerous articles for shipment and in transporting the same. The Commission will seek to avail itself of the expert knowledge thus developed and, in formulating amendments to these regulations or specifications supplemental thereto, while not bound thereby, will give due weight to such expert opinions.

#### GENERAL RULES.

1711. Carriers that are subject to the act to regulate commerce must not receive shipments of articles defined as dangerous by these regulations when the shipments are not packed, marked, labeled, described, and certified as prescribed herein. The method of manufacture and packing of articles defined as dangerous by these regulations, so far as it affects safe transportation, must be open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives.

1712. All shipments of articles subject to these regulations offered for transportation in interstate commerce must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing.

The same description of contents must be marked plainly on the outside of each package.

In less-than-carload shipments each package must be marked also to show plainly the name and address of the consignee. This address, the name of contents, and the required label or "no label required" marking, should be as near together as practicable.

1713. All shipments of articles defined as dangerous by these regulations, and for which detailed instructions for pack-

ing are not given herein, must be securely packed in containers strong enough to stand without rupture or leakage of contents all ordinary shocks incident to reasonably careful handling during transit. It is the duty of shippers, where leakage from their shipping containers is known to be a probable source of fire or material damage to other freight, to exercise special care in constructing shipping containers for such articles, even though their names do not appear in the list of dangerous articles, paragraph 1807.

1714. Carriers must forward shipments of dangerous articles other than explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carriers' property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

1715. (a) *Serious violations of these regulations*, such as the discovery of leaking or broken packages of dangerous articles, and *accidents or fires* in connection with the transportation or storage on carrier's property of dangerous articles, must be reported by the carrier to the chief inspector of the Bureau of Explosives, 30 Vessey Street, New York City.

(b) Consignees should report promptly to the chief inspector, Bureau of Explosives, all instances of broken or defective containers in shipments of dangerous articles received by them.

#### SECTION I. INFORMATION AND DEFINITIONS.

1800. For transportation purposes dangerous articles other than explosives are divided into the following groups:

1. *Forbidden articles.*
2. *Acceptable articles.*

##### GROUP 1.—FORBIDDEN ARTICLES.

1801. The following are *forbidden articles*:

(a) Outside packages containing in the same compartment interior packages, the mixture of whose contents would be liable to cause a dangerous evolution of heat, gas, or corrosive materials.

(b) Cylinders containing gases capable of combining chemically.

(c) Packages containing dangerous articles in a leaking condition or in such an insecure condition as to make leakage probable during transit.

(d) Rags or cotton waste oily with more than 5 per cent of vegetable or animal oil, or wet rags.

(e) Charcoal screenings from wet charcoal, or wet screenings, or screenings that have been wet. (See par. 1833 (c).)

(f) Dangerous articles not properly packed, marked, labeled, described, and certified.

(g) Iron sponge and spent oxide that has not been properly oxidized during manufacture.

## GROUP 2.—ACCEPTABLE ARTICLES.

### Definitions

#### *Inflammable Liquids—Red Label.*

1802. This group includes any liquid or liquid mixture that gives off inflammable vapors (as determined by flash point from Tagliabue's open cup tester, as used for test of burning oils) at or below a temperature of 80° F.

#### *Inflammable Solids—Yellow Label.*

1803. This group includes all substances other than those classified as explosives that are liable under conditions incident to transportation to cause fires by self-ignition through friction, through absorption of moisture, or through spontaneous chemical changes.

#### *Oxidizing Materials—Yellow Label.*

1804. This group includes all substances, such as chlorates, permanganates, peroxides, and nitrates, that yield oxygen readily to stimulate the combustion of organic matter.

#### *Corrosive Liquids—White Label.*

1805. This group includes the strong mineral acids (in strength greater than one-half concentrated, i. e., 47 per cent sulphuric, 34 per cent nitric, 20 per cent hydrochloric) and other strongly corrosive liquids that are liable to cause fires when mixed with chemicals or with organic matter, or are liable, in case of leakage from their shipping containers, to damage other freight materially.

#### *Compressed Gases—Red or Green (Gas) Label.*

1806. This group includes all inflammable or non-inflammable gases assembled for shipment under pressure exceeding 25 pounds per square inch, except when such gases are in cylinders or tubes not exceeding  $\frac{7}{8}$  inch outside diameter and of not more than 4 fluid ounces water capacity.

### LIST OF PRINCIPAL DANGEROUS ARTICLES.

1807. (a) The following list shows the names of well-known articles in general use, other than explosives, that are

dangerous; the kind of label required on outside packages; the quantities that may be shipped in one outside package without a label when certified and marked "No label required," and the label exemptions on account of specified packing. (See column 5 of list.)

(b) When a shipment described under a name not in the following list is defined as a dangerous one by paragraphs 1802 to 1806, inclusive, the shipper must inform the carrier of the fact by use of the proper label prescribed herein, and the shipping order must show the certificate prescribed by paragraph 1867. The maximum quantity of any such article shipped in one outside package, without label, when certified and marked "No label required," except as specified herein, must not exceed the limit prescribed by column 3 of the list for dangerous articles of similar flash point or characteristic.

(c) Inflammable liquids as defined by paragraph 1802, in securely closed glass, earthenware, or metal containers of not exceeding one pint capacity each, when flash point is  $20^{\circ}$  F., or lower, and of not exceeding one quart capacity when flash point is above  $20^{\circ}$  F., packed and cushioned in fiberboard or corrugated strawboard containers, wooden boxes, kegs, or barrels, complying with shipping container specifications that apply, may be shipped without labels when certified and marked "No label required."

(d) A shipment described under a definite and proper name not in the following list and on a shipping order with no notation as to labels applied and no shipper's certificate, will be assumed by the carrier in the absence of knowledge to the contrary, to be not dangerous under these regulations.

(e) When articles described under names in the following list marked (\*) are not dangerous under the regulations, the shipper must, unless otherwise provided in said list, state on his shipping order, as a part of the description of such article "No label required," and must also furnish the certificate prescribed by paragraph 1867 and mark the package "No label required."

(f) When several dangerous articles are placed in one outside package without violating these regulations, labels must be applied, when the combined quantity of the articles of any one group exceeds the lowest limit prescribed by column 3 for any of the articles of that group that are included.

(g) When dangerous articles requiring the red label are shipped in the same outside package with dangerous articles requiring yellow or white labels, the outside package must be labeled with the red label only

## LIST OF PRINCIPAL DANGEROUS ARTICLES.

Names of dangerous articles.	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	2	° F	3	4	5
1						
*Acetate, amly..... Acetate, ethyl..... Acetate, methyl..... Acetone (ethyl methyl ketone).	Inf. L..... do .. do .. do ..	70-80 40 40 35	1 gallon..... do .. do .. do ..	Red..... do .. do .. do ..	Para. 1807 (c), 1822, 1824 to 1827. Do. Do. Do.	
*Acid, hydrochloric (muriatic).	Cor. L.....		5 pints (6 pounds)...	White.....	Para. 1805, 1851, 1852 and 1856.	
Acid, hydrofluoric..... Acid, nitrating (mixed acid).	do .. do ..		do .. No exemption.....	do .. do ..	Para. 1851, 1852 and 1854. Mixed nitric and sulphuric acids, par. 1858.	
*Acid, nitric..... *Acid, sulphuric.....	do .. do ..		do .. 5 pints (9 pounds)...	do .. do ..	Para. 1805, 1851, 1852 and 1857. Para. 1805, 1851, 1852 and 1855.	
Alcohol..... Alcohol, denatured.....	Inf. L..... do ..	57-65 40-60	1 gallon..... do ..	Red..... do ..	Para. 1807 (c), 1822, 1824 to 1827.	
Alcohol, wood..... Ammonium perchlorate.....	do .. Oxi. M.....	45	do .. 25 pounds.....	do .. Yellow.....	Do. Para. 1822 and 1841.	
Barium, chlorate of..... Barium, nitrate of, in bags...	do .. do ..		do .. 100 pounds (in one shipment).	do .. do ..	Do. Para. 1822 and 1841. (See Nitrates.)	
Barium peroxide (binonide, dioxide).	do ..		25 pounds.....	do ..	Para. 1822 and 1841.	

References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.



Benzol (benzene).....	Inf. L.....	20	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Benzine.....	do.....	†0	do.....	do.....	Do.
Bronzing liquid.....	Cor. L.....		5 pints.....	White.....	Par. 1853.
Burnt cotton.....	Inf. L.....	0-70	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Calcium phosphide.....	Inf. S.....		No exemption.....	Yellow.....	Par. 1837.
Carbon bisulphide.....	do.....		do.....	do.....	Par. 1835.
Celluloid scrap.....	Inf. L.....	†0	5 pounds.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
Cement, leather.....	Inf. S.....	†0	No exemption.....	Yellow.....	Par. 1839.
*Cement, liquid, n. o. s.....	Inf. L.....	0-80	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Cement, roofing (liquid).....	do.....	0-80	do.....	do.....	Do.
Cement, rubber.....	do.....	†0	do.....	do.....	Do.
Charcoal, wood, ground or pulverized.....	Inf. S.....		100 pounds.....	Yellow.....	(Par. 1833. Charcoal "in bottles," "in boxes," "in barrels," or "in tablets," "case-hardening charcoal," "animal charcoal," or "bone charcoal" is exempt from label and certificate requirements, when so described. Lump charcoal made by old kiln or pit method which provides long air exposure before shipment is exempt from label and placard requirements when certified and marked "No label required" or "No placard required." Pat. 1833.
*Charcoal, wood, lump.....	do.....		2,000 pounds.....	do.....	Pat. 1833.
			(in one shipment)		Pars. 1822 and 1841.
			(in one shipment)		
Charcoal, wood, screenings.....	do.....		No exemption.....	do.....	
Chlorates, n. o. s.....	Oxi. M.....		25 pounds.....	do.....	
Chloride of phosphorus.....	Cor. L.....		(in one shipment)	White.....	Par. 1855.
Chloride of sulphur.....	do.....		No exemption.....	do.....	Do.
Chloride of sulphur, liquid.....	do.....		do.....	do.....	Pars. 1822, 1851, 1852 and 1855.
*Cleaning fluid (or liquid).....	Inf. L.....	0-80	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Coal-tar light oil.....	do.....	0-80	do.....	do.....	Do.
*Coal-tar naphtha.....	do.....	0-80	do.....	do.....	Do.
Collodion.....	do.....	†0	do.....	do.....	Do.
Cologne spirits (alcohol).....	do.....	60	do.....	do.....	Do.
Columbian spirits (alcohol, wood).....	do.....	45	do.....	do.....	Do.

†At or below.

\*See paragraph 1807 (e).

## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1	2	3	4	5
Names of dangerous articles.	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required."	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
*Compounds, paint or varnish removing, liquid.	Inf. L. ....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Compounds, polishing liquid.	do .....	do .....	do .....	Do.
*Compounds, type cleansing, liquid.	do .....	do .....	do .....	Do.
*Compounds, vulcanizing.	do .....	do .....	do .....	Do.
*Compounds, vulcanizing.	Cor. L. ....	do .....	White.....	Pars. 1822, 1851, 1852 and 1855.
*Distillate .....	Inf. L. ....	do .....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Dressing, leather .....	do .....	do .....	do .....	Do.
*Driers, paint or japan .....	do .....	do .....	do .....	Do.
*Eradicators, paint or grease, liquid.	do .....	do .....	do .....	Do.
*Ether .....	do .....	5 pounds.....	do .....	Do.
*Extracts, liquid (flavoring) ..	do .....	1 gallon.....	do .....	Pars. 1807 (c), 1822, 1824 to 1827. Bark, Tanner's, medicinal and wood extracts, are exempt from label and certificate requirements when properly so described.
Gases, compressed:	Comp. G. ....	No exemption.....	Red (gas) ..	Pars. 1861 to 1863.
Acetylene (see Note 1) .....	do .....	do .....	Green (gas)	Pars. 1861 and 1862.
Air, compressed .....	do .....	do .....	do .....	Do.
Anhydrous ammonia .....	do .....	do .....	do .....	Do.

Blaugas.....	do	.....	do	.....	do	.....	Red (gas) ..	Pars. 1861 to 1863.
Carbonic acid.....	do	.....	do	.....	do	.....	Green (gas) ..	Pars. 1861 and 1862.
Chlorine.....	do	.....	do	.....	do	.....	do	Do.
Coal gas.....	do	.....	do	.....	do	.....	Red (gas) ..	Do.
Dental.....	do	.....	do	.....	do	.....	Green (gas) ..	Do.
Hydrogen.....	do	.....	do	.....	do	.....	Red (gas) ..	Pars. 1861 to 1863.
Liquefied petroleum gas.....	do	.....	do	.....	do	.....	do	Pars. 1824 and 1861 to 1863.
Oxygen.....	do	.....	do	.....	do	.....	Green (gas) ..	Pars. 1861 and 1862.
Plintsch.....	do	.....	do	.....	do	.....	Red (gas) ..	Pars. 1861 to 1863.
Sulphur dioxide.....	do	.....	do	.....	do	.....	Red or	Pars. 1861 to 1863.
Compressed gases, n. o. s.....	do	.....	do	.....	do	.....	green (gas) ..	Pars. 1861 to 1863.
Gas drips (hydrocarbon).....	Inf. L.....	†0	1 gallon.....	.....	do	.....	Red.....	Pars. 1867 (c), 1822, 1824 to 1827.
Gasoline (see Note 1).....	do	†0	do	.....	do	.....	do	Pars. 1867 (c), 1822, 1824 to 1827.
Gasoline	made by compressing natural gas or by blending liquefied petroleum gas with refinery gasoline or naphtha may be described and shipped as gasoline, provided the vapor pressure does not exceed 10 pounds per square inch.							
High wines (alcohol).....	do	60-80	do	.....	do	.....	do	Pars. 1807 (c), 1822, 1824 to 1827.
*Insecticide (vermin exterminator, liquid.....	do	0-80	1 gallon.....	.....	do	.....	do	Do.
Lacquer.....	do	0-80	do	.....	do	.....	do	Pars. 1807 (c), 1822, 1824 to 1827.
Lead, nitrate of, in bags.....	Oxi. M.....	.....	100 pounds.....	.....	do	.....	Yellow.....	Pars. 1822 and 1841. (See Nitrates.)
Liquefied petroleum gas.....	Inf. L.....	†0	(in one shipment)	.....	do	.....	do	Pars. 1807 (c), 1822, 1824 to 1827. (See Paint.)
Matches "Strike Anywhere".....	Inf. S.....	.....	No exemption.....	.....	do	.....	Red.....	Pars. 1822 and 1836.
Naphtha.....	Inf. L.....	†0	1 gallon.....	.....	do	.....	Yellow.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Naphtha distillate.....	do	0-80	do	.....	do	.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Nitrates, in bags.....	Oxi. M.....	.....	100 pounds.....	.....	do	.....	do	Do.
			(in one shipment)	.....	do	.....	Yellow.....	Pars. 1822 and 1841 Nitrates in boxes, kegs or barrels are exempt from label and certificate requirements when properly so described.

\*See paragraph 1867 (e).

†At or below.

NOTE 1.—Automobiles and motor cycles equipped with securely closed acetylene gas cylinders or tanks containing gasoline are exempt from label and certificate requirements.

## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

Names of dangerous articles.	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxl. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required."	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
1	2	3	4	5
Nitrocellulose, wet with solvent.	Inf. L.....	No exemption.....	Red.....	Must contain not less than 30 per cent by weight of a solvent whose flash point is not lower than 40° F. and must be packed in glass bottles (par. 1824) or in securely closed metal vessels that will stand the drop tests prescribed for metal barrels. (Specification No. 5.) Par. 1834. Dry nitrocellulose and dry nitro-starch are high explosives. Pars. 1807 (c), 1822, 1824 to 1827. Do.
Nitrocellulose or nitro-starch, wet with 20 per cent water •Oil, gas..... •Oil described as "Oil," or "Oil, n. o. s.," or "Petroleum oil," or "Petroleum oil, n. o. s." Paint aluminum, bronzing or gold. •Paint, liquid.....	Inf. S.....  Inf. L..... do .....  do ..... do ..... do .....	do ..... 1 gallon..... do .....  do ..... do .....	Yellow.....  Red..... do .....  do ..... do .....	See Paint.  Pars. 1807 (c), 1822, 1824 to 1827. Inflammable paint, varnish, wood filler, or wood stain, liquid, in class or earthenware vessels, or in metal cans, all packed in wooden barrels or



## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1 Name of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.— Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
Shellac, varnish..... Soda, chloride of..... Soda, nitrate of, in bags.....	Inf. L..... Oxi. M..... do .....	1 gallon..... 25 pounds..... 100 pounds.....	Red..... Yellow..... do .....	See Paint. Pars. 1822 and 1841. Pars. 1822 and 1841. (See Nitrates.)
Soda nitrite of..... Sodium, metallic..... Sodium, peroxide..... Sodium sulphide (fused and ground).....	do .....	(in one shipment) 25 pounds..... No exemption..... do .....	do .....	Pars. 1822 and 1841. Par. 1831. Pars. 1822 and 1841. Par. 1835.
Strontia, nitrate of, in bags..	Oxi. M.....	100 pounds.....	do .....	Pars. 1822 and 1841. (See Nitrates)
Sulphur, chloride of..... Tin, bichloride, liquid (tetrachloride of).....	Cor. L..... do .....	(in one shipment) No exemption..... do .....	White.....	Pars. 1822, 1851, 1852 and 1855. Par. 1855.
Toluol (toluene)..... Trinitrotoluol, wet with 10 per cent water.....	Inf. L..... Inf. S.....	1 gallon..... No exemption.....	Red..... Yellow.....	Pars. 1807 (c), 1822, 1824 to 1827. Par. 1834.
*Varnish..... Zinc flue dust.....	Inf. L..... Inf. S.....	1 gallon..... 10 pounds.....	Red..... Yellow.....	See Paint. Par. 1830.

At or below.

\*See paragraph 1807 (e).

## SECTION II. RULES FOR PACKING.

1821. Dangerous articles for which the yellow and white labels, respectively, are prescribed must not be packed in the same package, unless the bottle containing the corrosive liquid is cushioned by incombustible absorbent material in tightly closed metal containers, as prescribed by paragraph 1851. Cylinders of compressed gases must not be packed with other articles.

1822. (a) The construction of barrels, drums, boxes, cans, carboys, or other containers purchased subsequent to March 31, 1912, and used in shipping dangerous articles other than explosives must conform to specifications approved by the Interstate Commerce Commission that apply; and each container must be stamped, labeled or marked "Complies with I. C. C. Spec'n No. —," or equivalent marking as stated in the specification.

(b) In addition to standing the tests prescribed, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of damaged or broken packages on arrival at destination, must be reported to and recorded by the Bureau of Explosives, to the end that further use of any particular kind of package shown by experience to be inefficient may be prohibited by the Commission.

(c) Pending approval and promulgation by the Commission of specifications for types of shipping containers other than those for which specifications are published herein, containers may be used which after investigation made by the Bureau of Explosives, or by other competent testing laboratory in the presence of a representative of the Bureau of Explosives, are shown to possess the general efficiency and the protection against leakage of contents afforded by the standard types of corresponding capacity described in the specifications published herein, provided they are labeled or marked to show compliance with this requirement.

(d) Tank cars used for the shipment of dangerous articles other than explosives must comply with Master Car Builders' rules, and a tank car that leaks or one that has any defect which would make leakage during transit probable or that has not been tested and stenciled in compliance with Master Car Builders' rules must not be used for the shipment of any inflammable liquid.

(e) The tanks and their fittings must be examined by the



shipper to see that they are in proper condition for loading. Tanks must be examined for evidence of previous leaks; safety and outlet valves, dome covers and outlet-valve caps must be in proper condition before loading; after loading, tanks must not show any dropping of liquid contents at the seams or rivets, and should such dropping appear cars must be properly repaired; outlet valves must not permit more than a dropping of the liquid with valve caps off, otherwise valve must be reground and repaired. Dome covers and valve caps provided with suitable gaskets, must be properly screwed in place before cars are tendered to the carrier.

(f) Loaded tank cars tendered for shipment must be inspected by the carrier to see that they are not leaking, that the air and hand brakes, journal boxes, trucks and safety appliances are in proper condition for service, and that the car has been tested within limits prescribed by Master Car Builders' rules.

(g) Tests of all tank cars and their safety valves, as made in compliance with Master Car Builders' rules, must be certified by the party making the tests to the owner of the tank car and to the chief inspector, Bureau of Explosives; and this certification must show the initials and number of the tank car, the service for which it is suitable, the date of test, place of test, and by whom made.

#### INFLAMMABLE LIQUIDS—RED LABEL.

1824. (a) All inflammable liquids must be shipped in packages complying with specifications that apply as follows:

(b) In tightly closed metal cans of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11.

(c) In well-stoppered glass or earthenware vessels of not exceeding 1 gallon capacity, cushioned in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11, or in a well-stoppered glass or earthenware vessel of not exceeding 5 gallons capacity, well cushioned in a wooden box and not more than one such vessel in the box. The completed package must comply with swing and drop tests prescribed for boxed carboys by Specification No. 1.

(d) In well-stoppered glass, earthenware or metal vessels of not exceeding 1 pint capacity when flash point is 20° F., or lower, and 1 quart capacity when flash point is above 20° F., cushioned in fiber board or corrugated strawboard containers complying with Specification No. 24.

(e) In wooden kits of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2, or cushioned in wooden barrels or kegs complying with Specification No. 11.

(f) In metal-jacketed cans of not exceeding 10 gallons capacity, complying with Specification No. 23.

(g) In well-stoppered carboys of not exceeding 13 gallons capacity, cushioned in wooden boxes complying with Specification No. 1.

(h) In wooden barrels or kegs complying with Specification No. 10 when the flash point of the liquid is not lower than 20° F., or in wooden barrels or kegs complying with Specification No. 9 when the flash point is lower than 20° F., unless otherwise provided in the tariffs under which shipment moves.

(i) In metal barrels or drums complying with Specification No. 5.

(j) In tank cars complying with Master Car Builders' specifications, provided the vapor tension of the inflammable liquid corresponding to a temperature of 100° F. (90° F. Nov. 1 to Mar. 1) does not exceed 10 pounds per square inch. After May 1, 1915, a tank car must not be used for shipping inflammable liquids with flash point lower than 20° F., unless it has been tested with cold-water pressure of 60 pounds per square inch and stenciled as required by Master Car Builders' rules.

(k) Liquid condensates from natural gas or from casing-head gas of petroleum oil wells whose vapor tension at 100 degrees F. (90 degrees F. November 1st to March 1st) exceeds 10 pounds per square inch, must be described as Liquefied Petroleum Gas. In measuring the vapor tension the container of the sample may be vented momentarily at a temperature of 70 degrees F. This product must be shipped in metal drums or barrels which comply with specification No. 5 and have a nominal capacity not exceeding 55 gallons; or in special insulated tank cars approved for this service by the Master Car Builders' Association, provided the vapor tension as above defined does not exceed 15 pounds per square inch. When the vapor tension as above defined exceeds 25 pounds per square inch, cylinders as prescribed for compressed gases (see paragraphs 1861 to 1863, inclusive) must be used.

When the condensate, blended or unblended with other products, has a vapor tension as above defined, not exceeding 10 pounds per square inch, and is shipped as "gasoline" in an ordinary tank car, 60-pound test class, defined in Master Car Builders' Association Specifications for Tank Cars, the safety valves of such a car must be set to operate at 25 pounds per

square inch, with a tolerance of one pound above or below; and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or "casinghead gas" is produced and shipped in a blended or unblended state; and the requirement for construction of dome covers and valve setting at 25 pounds must be made effective not later than January 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than 20 degrees F.

When the "blowing" of safety valves of a car containing inflammable liquids is noted, any available means for cooling the car shell and contents, such as spraying with water, should be utilized; and, if practicable, the car should be moved to an isolated point, to minimize the fire risk. Covering the safety valves with wet cloth, wet blankets or wet gunny sacks will decrease the danger of igniting vapors escaping from a "blowing" valve. The burning of these vapors at the safety valve is not liable to cause an explosion. The valves are designed to permit, in emergencies, the burning in this way of the entire contents of the car.

(1) Carbon bisulphide in interior packages of capacity greater than  $\frac{1}{2}$  gallon must be shipped in metal cans of not less than 28 gauge, boxed, complying with Specification No. 2; or in metal barrels or drums complying with Specification No. 5, such barrels or drums after January 1, 1916, not to exceed 55 gallons capacity. Carbon bisulphide may also be shipped in tank cars complying with paragraph 1824 (j).

1825. (a) Packages containing inflammable liquids must not be entirely filled. Sufficient interior space must be left vacant to prevent leakage or distortion of containers, due to increase of temperature during transit. In all such packages, this vacant space must not be less than 2 per cent of the total capacity of the container. In tank cars the vacant space must not be less than 2 per cent of the total capacity of the tank,

i. e., the shell and dome capacity, combined. If the dome of tank cars does not provide this 2 per cent, sufficient vacant space must be left in the shell of the tank to make up the difference.

(b) In packages containing alcohol, cologne spirits, high wines or other distilled spirits, the vacant interior space or allowance for wantage or ullage must conform to the United States Internal Revenue Regulations.

1826. Interior packages, containing 1 quart or more of an inflammable liquid, must be packed with their filling holes up and the top of the outside package must be plainly marked "THIS SIDE UP."

1827. Wooden-jacketed cans and wooden kits must not be used for the shipment of inflammable liquids, except as inside containers as provided by Specification No. 2 or 11.

Page 302.

Item	* * * * *	
		C. L.
16	PETROLEUM OR PETROLEUM PRODUCTS, * * *	
	Belt Oil,	
	Benzine,	
	Crude Oil,	
	Cordage Oil,	
	Felt Oil,	
	Floor Oil,	
	Fuel Oil,	
	Gas Oil,	
	Gas, Liquefied, vapor tension at 100 degrees F.,	
	not exceeding 25 lbs. per square inch,	
	Gasoline,	
	Harness Oil,	
	Leather Oil,	
	Lubricating Oil,	
	Miners' Oil,	
	Miners' Oil Stock,	
	Naphtha,	
	Naphtha Distillate,	
	Neatsfoot Oil,	
	Paint Oil,	
	Putty Oil,	
	Refined Oil, Distillate,	
	Refined Oil, illuminating or burning,	
	Soap Oil,	
	Tanners' Oil,	

Tobacco Oil,  
Transformer Oil,  
Wood Oil,  
Oil, not otherwise indexed by name, \* \*

In tank cars, C. L., weight per gallon 6.6  
lbs., \* \* \* subject to Rule 32..... 5

Supplement No. 9 to C. R. C. No. 10 (Cancels Supplements Nos. 2, 4 and 8) (Supplements Nos. 5, 6, 7 and 9 contain all changes) (Supplements Nos. 6 and 7 are suspension notices) *Supplement No. 9 to I. C. C. No. 12* (Cancels Supplements Nos. 2, 4 and 8) (Supplements Nos. 5, 6, 7 and 9 contain all changes) (Supplements Nos. 6 and 7 are suspension notices) Supplement No. 9 to P. S. C. Missouri No. 3; P. U. C. Colorado No. 3; P. S. C. Wyoming No. 2; P. U. C. Idaho No. 2; Illinois P. U. C. No. 1; C. C. Oklahoma No. 1; S. C. C. New Mexico No. 1 (Cancels Supplements Nos. 2, 4 and 8) (Supplements Nos. 5, 6, 7 and 9 contain all changes) (Supplements Nos. 6 and 7 are suspension notices).

#### THE WESTERN CLASSIFICATION NO. 54.

##### *Supplement No. 9.*

(Cancels Supplements Nos. 2, 4 and 8) (Supplements Nos. 5, 6, 7 and 9 contain all changes) (Supplements Nos. 6 and 7 are suspension notices) (Item 3, page 12, herein, issued on 30 days' notice, under special permission of the Interstate Commerce Commission, No. 40775 of February 17, 1917)

Applying on Freight Traffic covered by Tariffs issued subject thereto.

Issued and filed with the Interstate Commerce Commission by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

Issued and filed with the Board of Railway Commissioners for Canada by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

Issued and filed with the Public Service Commission of Missouri by R. C. Fyfe, as Agent for Missouri lines.

Issued and filed with the Public Utilities Commission of Colorado by R. C. Fyfe, as Agent for Colorado lines.

Issued and filed with the Public Service Commission of Wyoming by R. C. Fyfe, as Agent for Wyoming lines.

Issued and filed with the Public Utilities Commission of Idaho by R. C. Fyfe, as Agent for Idaho lines.

Issued and filed with the Illinois Public Utilities Commission by R. C. Fyfe, as Agent for Illinois lines.

Issued and filed with the Corporation Commission of Oklahoma by R. C. Fyfe, as Agent for Oklahoma lines.

Issued and filed with the State Corporation Commission of New Mexico by R. C. Fyfe, as Agent for New Mexico lines.

Issued March 5th, 1917—*Effective April 20th, 1917* (except as noted in individual items)

The Western Classification Committee, Transportation Building, Chicago, R. C. Fyfe, Chairman.

(Stamped:) Received: Interstate Commerce Commission; 15875; Mar 3 1917; Division of Tariffs.

\* \* \* \* \*

Page 6.

	DATE
ITEM	EFFECTIVE

#### Rule 44.

1	April 20, 1917.
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(Cancels Paragraph 1824 (k) of Rule 44, page 52, Classification 54.)

1824 (k) Liquid condensates from natural gas or from casinghead gas of petroleum oil wells whose vapor tension at 100 degrees F. (90 degrees F. November 1 to March 1) exceeds 10 pounds per square inch, must be described as Liquefied Petroleum Gas. In measuring the vapor tension the container of the sample may be vented momentarily at a temperature of 70 degrees F. This product must be shipped in metal drums or barrels which comply with specification No. 5 and have a nominal capacity not exceeding 55 gallons; or in special insulated tank cars approved for this service by the Master Car Builders' Association, provided the vapor tension as above defined does not exceed 15 pounds per square inch from April 1 to October 1, and 20 pounds per square inch from October 1 to April 1. When the vapor tension as above defined exceed 25 pounds per square inch, cylinders as prescribed for compressed gases (see paragraphs 1861 to 1863, inclusive) must be used.

When the condensate, blended or unblended with other products, has a vapor tension as above defined, not exceeding 10

pounds per square inch, and is shipped as "gasoline" in an ordinary tank car, 60-pound test class, defined in Master Car Builders' Association Specifications for Tank Cars, the safety valves of such a car must be set to operate at 25 pounds per square inch, with a tolerance of one pound above or below; and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or "casinghead gas" is produced and shipped in a blended or unblended state; and the requirement for construction of dome covers and valve setting at 25 pounds must be made effective not later than April 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than 20 degrees F.

When the "blowing" of safety valves of a car containing inflammable liquids is noted any available means for cooling the car shell and contents, such as spraying with water, should be utilized; and if practicable, the car should be moved to an isolated point, to minimize the fire risk. Covering the safety valves with wet cloth, wet blankets or wet gunny sacks will decrease the danger of igniting vapors escaping from a "blowing" valve. The burning of



these vapors at the safety valve is not liable to cause an explosion. The valves are designed to permit, in emergencies, the burning in this way of the entire contents of the car.

Supplement No. 10 to C. R. C. No. 10 (Cancels Supplements Nos. 3, 6 and 9) (Supplements Nos. 5, 7 and 10 contain all changes) (Supplement No. 7 is a suspension notice) *Supplement No. 10 to I. C. C. No. 12* (Cancels Supplements Nos. 3, 6 and 9) (Supplements Nos. 5, 7 and 10 contain all changes) (Supplement No. 7 is a suspension notice) Supplement No. 10 to P. S. C. Missouri No. 3; P. U. C. Colorado No. 3; P. S. C. Wyoming No. 2; P. U. C. Idaho No. 2; Illinois P. U. C. No. 1; C. C. Oklahoma No. 1; S. C. C. New Mexico No. 1 (Cancels Supplements Nos. 3, 6 and 9) (Supplements Nos. 5, 7 and 10 contain all changes) (Supplement No. 7 is a suspension notice)

#### THE WESTERN CLASSIFICATION NO. 54.

##### *Supplement No. 10.*

(Cancels Supplements Nos. 3, 6 and 9) (Supplements Nos. 5, 7 and 10 contain all changes) (Supplement No. 7 is a suspension notice) (Item 9, page 24 herein, issued under authority of Interstate Commerce Commission's Released Rates Order No. 1 of March 26, 1917.)

Applying on Freight Traffic covered by Tariffs issued subject thereto.

Issued and filed with the Interstate Commerce Commission by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

Issued and filed with the Board of Railway Commissioners for Canada by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

Issued and filed with the Public Service Commission of Missouri by R. C. Fyfe, as Agent for Missouri lines.

Issued and filed with the Public Utilities Commission of Colorado by R. C. Fyfe, as Agent for Colorado lines.

Issued and filed with the Public Service Commission of Wyoming by R. C. Fyfe, as Agent for Wyoming lines.

Issued and filed with the Public Utilities Commission of Idaho by R. C. Fyfe, as Agent for Idaho lines.

1086 GULF REFINING COMPANY, A CORPORATION, *v3*.

Issued and filed with the Illinois Public Utilities Commission by R. C. Fyfe, as Agent for Illinois lines.

Issued and filed with the Corporation Commission of Oklahoma by R. C. Fyfe, as Agent for Oklahoma lines.

Issued and filed with the State Corporation Commission of New Mexico by R. C. Fyfe, as Agent for New Mexico lines.

Issued April 14th, 1917—*Effective June 15th, 1917* (except as noted in individual items)

The Western Classification Committee, Transportation Building, Chicago, R. C. Fyfe, Chairman.

(Stamped:) Received; Interstate Commerce Commission; 23496; Apr 13 1917; Division of Tariffs.

\* \* \* \* \*

Page 7.

DATE  
ITEM EFFECTIVE

Rule 44.

1 April 20, 1917.

(Re-issue: Item 1, page 6, which cancelled Paragraph 1824 (k) of Rule 44, page 52, Classification 54.)

1824 (k) Liquid condensates from natural gas or from casinghead gas of petroleum oil wells whose vapor tension at 100 degrees F. (90 degrees F. November 1 to March 1) exceeds 10 pounds per square inch, must be described as Liquefied Petroleum Gas. In measuring the vapor tension the container of the sample may be vented momentarily at a temperature of 70 degrees F. This product must be shipped in metal drums or barrels which comply with specification No. 5 and have a nominal capacity not exceeding 55 gallons; or in special insulated tank cars approved for this service by the Master Car Builders' Association, provided the vapor tension as above defined does not exceed 15 pounds per square inch from April 1 to October 1, and 20 pounds per square inch from October 1 to April 1. When the vapor tension as above defined exceed 25 pounds per square inch, cylinders as prescribed for compressed gases (see paragraphs 1861 to 1863, inclusive) must be used.

When the condensate, blended or unblended with other products, has a vapor tension as above defined, not exceeding 10 pounds per square inch, and is shipped as "gasoline" in an ordinary tank car, 60-

pound test class, defined in Master Car Builders' Association Specifications for Tank Cars, the safety valves of such a car must be set to operate at 25 pounds per square inch, with a tolerance of one pound above or below; and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or "casinghead gas" is produced and shipped in a blended or unblended state; and the requirement for construction of dome covers and valve setting at 25 pounds must be made effective not later than April 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than 20 degrees F.

When the "blowing" of safety valves of a car containing inflammable liquids is noted any available means for cooling the car shell and contents, such as spraying with water, should be utilized; and if practicable, the car should be moved to an isolated point, to minimize the fire risk. Covering the safety valves with wet cloth, wet blankets or wet gunny sacks will decrease the danger of igniting vapors escaping from a "blowing" valve. The burning of these vapors at the safety valve is not liable

to cause an explosion. The valves are designed to permit, in emergencies, the burning in this way of the entire contents of the car.

Supplement No. 13 to C. R. C. No. 10 (Cancels Supplement No. 10) (Supplements Nos. 5, 11, 12 and 13 contain all changes) (Supplements Nos. 11 and 12 are Suspension Notices) *Supplement No. 13 to I. C. C. No. 12* (Cancels Supplement No. 10) (Supplements Nos. 5, 11, 12 and 13 contain all changes) (Supplements Nos. 11 and 12 are Suspension Notices) Supplement No. 13 to P. S. C. Missouri No. 3; P. U. C. Colorado No. 3; P. S. C. Wyoming No. 2; P. U. C. Idaho No. 2; Illinois P. U. C. No. 1; C. C. Oklahoma No. 1; S. C. C. New Mexico No. 1 (Cancels Supplement No. 10) (Supplements Nos. 5, 11, 12 and 13 contain all changes) (Supplements Nos. 11 and 12 are Suspension Notices)

#### THE WESTERN CLASSIFICATION NO. 54.

##### *Supplement No. 13.*

(Cancels Supplement No. 10) (Supplements Nos. 5, 11, 12, and 13 contain all changes) (Supplements Nos. 11 and 12 are Suspension Notices) (This supplement contains matter issued on one day's notice, under special permission of the Interstate Commerce Commission No. 42561 of June 1, 1917)

Applying on Freight Traffic covered by Tariffs issued subject thereto.

Issued and filed with the Interstate Commerce Commission by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

Issued and filed with the Board of Railway Commissioners for Canada by R. C. Fyfe, as Agent for the Individual Carriers shown in the Classification and Supplements.

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Issued and filed with the Corporation Commission of Oklahoma by R. C. Fyfe, as Agent for Oklahoma lines.

Issued and filed with the State Corporation Commission of New Mexico by R. C. Fyfe, as Agent for New Mexico lines.

Issued June 12th, 1917—*Effective August 1st, 1917* (except as noted in individual items)

The Western Classification Committee, Transportation Building, Chicago, R. C. Fyfe, Chairman.

(Stamped:) Received; Interstate Commerce Commission; 40604; Jun 12 1917; Division of Tariffs.

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Page 3.

\* \* \* \* \*

Changes effective August 1, 1917.

Classification reads:

St. Louis and San Francisco R. R. (James W. Lusk, W. C. Nixon, and W. B. Biddle, Receivers) FX1 No. 95.

Changed to read:

St. Louis-San Francisco Ry. Co. FX1 No. 155.

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Page 9.

ITEM	DATE EFFECTIVE
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1	April 20, 1917.
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(Reissue: Item 1, page 7, Supp. 10, which was reissue, Item 1, page 6, Supp. 9, which cancelled Paragraph 1824 (k) of Rule 44, page 52, Classification 54.)

Rule 44.

1824 (k) Liquid condensates from natural gas or from casinghead gas of petroleum oil wells whose vapor tension at 100 degrees F. (90 degrees F. November 1 to March 1) exceeds 10 pounds per square inch, must be described as Liquefied Petroleum Gas. In measuring the vapor tension the container of the sample may be vented momentarily at a temperature of 70 degrees F. This product must be shipped in metal drums or barrels which comply with specification No. 5 and have a nominal capacity not exceeding 55 gallons; or in special insulated tank cars approved for this service by the Master Car Builders' Association, provided the vapor tension as above defined does not exceed 15 pounds per square inch from April 1 to October 1, and 20 pounds per square inch from October 1

to April 1. When the vapor tension as above defined exceed 25 pounds per square inch, cylinders as prescribed for compressed gases (see paragraphs 1861 to 1863, inclusive) must be used.

When the condensate, blended or unblended with other products, has a vapor tension as above defined, not exceeding 10 pounds per square inch, and is shipped as "gasoline" in an ordinary tank car, 60-pound test class, defined in Master Car Builders' Association Specifications for Tank Cars, the safety valves of such a car must be set to operate at 25 pounds per square inch, with a tolerance of one pound above or below; and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or "casinghead gas" is produced and shipped in a blended or unblended state; and the requirement for construction of dome covers and valve setting at 25 pounds must be made effective not later than April 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than 20 degrees F.

When the "blowing" of safety valves of a car containing inflammable liquids is

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**Government's Exhibit 38.**

Only three supplements to this classification will be in effect at any time.

C. R. C. No. 8 (Cancels C. R. C. No. 7 and supplements)

I. C. C. No. 10 (Cancels I. C. C. No. 9 and supplements)

**THE WESTERN CLASSIFICATION NO. 52**

(Cancels the Western Classification No. 51 and supplements)

Applying on freight traffic covered by tariffs issued subject thereto.

Issued September 15, 1913. *Effective November 1, 1913.*

Issued and filed with the Interstate Commerce Commission by R. C. Fyfe, as agent for the individual carriers shown herein.

Issued and filed with the Board of Railway Commissioners for Canada by R. C. Fyfe, as agent for the individual carriers shown herein.

The Western Classification Committee, Transportation Building, Chicago; R. C. Fyfe, Chairman. Copyright, 1913, by R. C. Fyfe, Chairman.

(Stamped:) Received; Interstate Commerce Commission; 54183; Sep 10, 1913; Division of Tariffs. Cancelled by I. C. C. No. 11; Effective 2-20-1915.

• • • • •  
*Pages i, iv, vii and viii.*

• • • • •  
 This Classification is filed by me with the Interstate Commerce Commission as agent for the following lines:



Kansas City Southern Ry.....FX1 No.34

St. Louis & San Francisco R. R. (Thos. H.  
West, W. C. Nixon, W. B. Biddle, Receivers) ..FX1 No.95

St. Louis, San Francisco & Texas Ry...FX1 No.19  
Avery Turner and G. H. Schleyer, Receivers)

Texarkana & Ft. Smith Ry.....FX1 No.28

Texas & New Orleans R. R.....FX1 No.22

*Pages 203 & 204*

	OILS:	C.L.
11	Petroleum and Petroleum Products, including Gasoline, Naphtha, :	***
5	Petroleum, as described in Item 11, page 203 of Classification, except Crude Petroleum, Petroleum Gas Oil and Petroleum Fuel Oil, in tank cars, C. L., weight per gallon 6.6 lbs.,	5

**Government's Exhibit 39.**

Only three supplements to this classification will be in effect at any time.

C. R. C. No. 9 (Cancels C. R. C. No. 8 and supplements)  
*I. C. C. No. 11* (Cancels I. C. C. No. 10 and supplements)  
 U. S. C. Mo. No. 2 (Cancels P. S. C. Mo. No. 1 and supplements)

THE WESTERN CLASSIFICATION NO. 53

(Cancels the Western Classification No. 52 and supplements)

Applying on freight traffic covered by tariffs issued subject thereto.

Issued December 31, 1914. *Effective February 20, 1915.*

Issued and filed with the Interstate Commerce Commission by R. C. Fyfe, as Agent for the Individual Carriers shown herein.

Issued and filed with the Board of Railway Commission-

ers for Canada by R. C. Fyfe, as Agent for the Individual Carriers shown herein.

Issued and filed with the Public Service Commission of Missouri by R. C. Fyfe, as Agent for Missouri lines.

The Western Classification Committee, Transportation Building, Chicago; R. C. Fyfe, Chairman. Copyright, 1915, by R. C. Fyfe, Chairman.

(Stamped:) Received; Interstate Commerce Commission; 7412; Jan 8 1915; Division of Tariffs. Cancelled by I. C. C. 12; 9-1-16.

Pages i, v. & viii

This Classification is filed by me with the Interstate Commerce Commission as agent for the following lines:

Kansas City Southern Ry.....FX1 No. 34

St. Louis & San Francisco R. R. (Thos. H. West, W. C. Nixon, W. B. Biddle, Receivers) ..FX1 No. 95

St. Louis, San Francisco & Texas Ry. (Avery Turner and G. H. Schleyer, Receivers) ...FX1 No. 19

Texarkana & Ft. Smith Ry.....FX1 No. 28

Texas & New Orleans R. R.....FX1 No. 22

Pages 253 & 254

#### OILS:

C.L

11 Petroleum and Petroleum Products, including Gasoline, Naphtha, \* \* \* :

2 Petroleum, as described in Item 11, page 253 of Classification, except Crude Petroleum, Petroleum Gas Oil and Petroleum Fuel Oil, in tank cars, C. L., weight per gallon 6.6 lbs., \* \* \* .....

5

#### Government's Exhibit 40.

Only two Supplements to this Tariff will be in effect at any time.

I. C. C. No. 1186. For cancellations, see page 2.

SOUTHWESTERN LINES TARIFF NO. 79

For cancellations, see page 2.

For Individual Lines Tariff Numbers, see page 2.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads, (see page 8) from Oklahoma producing points (shown on pages 9 to 11, inclusive) to interstate points (see page 12 to 14, inclusive).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items, herein.

Issued March 19, 1917. *Effective May 2, 1917* (except as noted on pages 29, 34 to 37, 67, 70 to 72, inclusive, and 87).

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25080. C. F. 41860.

(Stamped:) Received; Interstate Commerce Commission; 17912; Mar 17 1917; Division of Tariffs. Cancelled by-I. C. C. No. 1219; Effective 4-27-18.

\* \* \* \* \*

Page 2.

CANCELLATION NOTICE.

Southwestern Lines Tariff No. 79, F. A. Leland's I. C. C. No. 1186, supersedes those portions of:

\* \* \* \* \*

Southwestern Lines' Tariff No. 26T, F. A. Leland's I. C. C. No. 1048, cancelled by Supplement No. 64.

\* \* \* \* \*

Pages 3, 4, 5, &amp; 6.

## PARTICIPATING CARRIERS.

NAMES OF CARRIERS.	Under Powers of Attorney to F. A. Leland Agent	
	FX 1. No.	
Atchison, Topeka and Santa Fe Ry.....	33	
Gulf, Colorado & Santa Fe Ry.....	39	
Kansas City Southern Ry. (The).....	24	
Midland Valley R. R.....	18	
St. Louis-San Francisco Ry. Co.....	137	
Texas & New Orleans R. R. Co.....	12	
Houston & Texas Central R. R. Co.....	16	
Texarkana & Ft. Smith Ry.....	20	
Missouri, Kansas & Texas Ry.....	33	
Charles E. Schaff, Receiver.		
Missouri, Kansas & Texas Ry. of Texas.....	38	
C. E. Schaff, Receiver.		

Pages 9 and 10.

## OKLAHOMA PRODUCING POINTS.

POINTS	RAILROAD LOCATION	GROUP LOCATION
Cushing.....	A. T. & S. F.....	A.....
Jenks.....	M. V. ....	A.....
Jennings.....	M. K. & T.....	A.....
Kiefer.....	St. L.-S. F.....	
(***)	M. V.....	A.....
Drumright.....	A. T. & S. F.	(Jennings (M. K. & T.) rate
(See Notes 2***)		(plus one cent per one
		(hundred pounds.....

Page 11.

Note 2—Rates from Drumright, Frey, Oilton, Pemeta, Player, Ruska and Schlegel, apply via Cushing, Okla., and A. T. & S. F. Ry. only.

# 1096 GULF REFINING COMPANY, A CORPORATION, *v.* 3.

Page 15.

## GENERAL APPLICATION OF RATES.

ITEM NO.	SUBJECT	APPLICATION
5	Commodity Descriptions	Where reference is made to this Item the rates apply on: (For rates, see pages * * * 39 to 43 inclusive, * * *)  Petroleum Oil and its Products * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth class or lower in current Western Classification; * * * in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 90, or re-issues (See Note).  NOTE.—Rates to all points—except * * * Texas points—will also apply on Liquefied Petroleum Gas, in iron barrels, iron drums, iron cylinders, or specially insulated tank cars, subject to the conditions specified in Rule 44-K of current Western Classification.

Page 17.

## RULES AND CONDITIONS.

SUBJECT	ITEM NO.	RULES
Extent to which rates are governed by Western Classification (R.N.J-1694)	57	The ratings, rules and regulations, estimated and minimum weights, shipping and packing requirements, allowances and privileges, or other provisions or conditions authorized by this Tariff, abrogate and supersede those of Western Classification, in conflict. When the ratings in this Tariff are silent as to rules and regulations, estimated and minimum weights, shipping and packing requirements, allowances and privileges or other provisions or conditions, the ratings which are prescribed in such commodity items shall be subject to the terms (including estimated and minimum weights, shipping and packing requirements, or other provisions or conditions), prescribed for in connection with the ratings in the current Western Classification, on the same commodity.

Page 18.

## RULES AND CONDITIONS.

SUBJECT	ITEM NO.	RULES
Minimum Weights on Commodities in Tank Cars.	90	1. The weights and charges on shipments in tank cars, shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. No. A-722, or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections 2, 3 and 4—unless the weight carrying capacity of the car trucks, is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.

2. When shipments of Inflammable Liquids, subject to Section 1825, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

Pages 42 and 43.

RATE SECTION NO. 1.

PETROLEUM AND ITS PRODUCTS, AS DESCRIBED IN ITEM NO. 5, OR RE-ISSUES.

TO	FROM	
	Groups A ***	
Rates in Cents Per 100 lbs.		
TEXAS POINTS (***)		
Port Arthur.....		39
West Port Arthur.....		39

Page 78.

MISCELLANEOUS RATES.

Item No.	COMMODITY	FROM (Oklahoma Points)	TO	Rates in cents per 100 lbs.
425	Gasoline in tank cars, minimum weight as pro- vided in Item No. 90, or re-issues. ....	Kiefer....	Port Arthur, Tex. West Port Arthur. ..... Tex.	33

Page 80.

MISCELLANEOUS RATES.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. No. A-722), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum (\*\*\*).

TO TEXAS STATIONS . . .										Rates in Cents Per 100 Pounds.	
Item No. 452	FROM										
Jenks .....	Okla.										
Kiefer .....	Okla.										
Port Arthur.....										19½	

TO TEXAS STATIONS . . .										Rates in Cents Per 100 Pounds.	
Item No. 454.	FROM . . .										
	M. K. & T. RY. STATIONS.										
Cushing.....	Okla.	Jennings, Okla.									
	T. & N. O. R. R. STATIONS.										
West Port Arthur.....										19½	
Port Arthur.....										19½	

Rates and charges named in this supplement are not subject to increase shown in special supplement (Supplement No. 2), effective July 1, 1917.

*Supplement No. 3 to I. C. C. No. 1186.* Supplements Nos. 1, 2 and 3 contain all changes from the original tariff that are effective on July 14, 1917.

#### SOUTHWESTERN LINES TARIFF NO. 79

For Individual Lines Tariff Numbers, see page 2.

#### *Supplement No. 3*

Supplements Nos. 1, 2 and 3 contain all changes from the original tariff that are effective on July 14, 1917.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads, (see page 8 of tariff) from Oklahoma producing points (shown on pages 9 to 11, inclusive, of tariff, as amended) to interstate points (see pages 12 to 14, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12), or re-issues thereof.



The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items, herein.

Issued May 29, 1917. *Effective July 10, 1917* (except as noted on page 3, where reference is made to notes 12 and 15; page 7, where reference is made to note 1; page 8, and in items 289, 289A, 342 and 342-A).

Issued by F. A. Leland, Agent, St. Louis, Mo.  
Authority No. 25314.

(Stamped:) Received; Interstate Commerce Commission; 38907; May 31 1917; Division of Tariffs.

Page 3.

OKLAHOMA (\*\*\*) PRODUCING POINTS.

POINTS	RAILROAD LOCATION	GROUP LOCATION
Drumright. . . . .	A. T. & S. F.	(Cushing (A. T. & S. F.) (rate plus one cent (per one hundred pounds
(See Notes 2***)		

*Supplement No. 6 to I. C. C. No. 1186.* Cancels Supplements Nos. 1, 3, 4 and 5. Supplement No. 6 contains all changes from the original tariff that are effective on the date hereof.

SOUTHWESTERN LINES TARIFF NO. 79

For Individual Lines Tariff Numbers, see page 2.

*Supplement No. 6*

Cancels Supplements Nos. 1, 3, 4 and 5. Supplement No. 6 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads, (see page 8 of tariff) from Oklahoma producing points (shown on pages 9 to 11, inclusive, of tariff, as amended) to interstate points (see pages 12 to 14, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items, herein.

Issued July 17, 1917. *Effective August 29, 1917* (except as noted on page 3 where reference is made to note 17; on page 7; in items 287-A, 305-B, 340A, and in other individual items).

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25355.

(Stamped:) Received; Interstate Commerce Commission; 52234; Jul 18 1917; Division of Tariffs.

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Page 2.

OKLAHOMA (***) PRODUCING POINTS.			
POINTS	RAILROAD LOCATION	GROUP LOCATION	
Drumright (See Notes 2***)	A. T. & S. F.	(Cushing (A. T. & S. F.) (rate plus one cent (per one hundred (pounds	

Page 16.

## MISCELLANEOUS RATES.

Item No.	COMMODITY	FROM (Oklahoma Points)	TO	Rates in cents per 100 lbs.
425-B	Gasoline in tank cars, minimum weight as pro- vided in Item No. 90, or re-issues. . . . .	Kiefer. . . . .	Port Arthur, Tex. West Port Arthur. ..... Tex.	33

Page 17.

## MISCELLANEOUS RATES.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-L, E. B. Boyd's I. C. C. No. A-785), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum (\*\*\*) .

TO TEXAS STATIONS * * *		Rates in Cents Per 100 Pounds.
Item No. 454-A, Cance's 454.		
Cushing .....	Okla.	
T. & N. O. R. R. STATIONS:		
West Port Arthur.....		19½
Port Arthur.....		19½
T & FT. S. RY. STATIONS:		
All Stations. . . . .		19½

*Supplement No. 7 to I. C. C. No. 1186.* Cancels Supplement No. 6. Supplement No. 7 contains all changes from the original tariff that are effective on the date hereof.

**SOUTHWESTERN LINES TARIFF NO. 79**

For Individual Lines Tariff Numbers, see page 2.

*Supplement No. 7*

Cancels Supplement No. 6.

Supplement No. 7 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads, (see page 8 of tariff) from Oklahoma producing points (shown on pages 9 to 11, inclusive, of tariff, as amended) to interstate points (see pages 12 to 14, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items, herein.

Issued August 14, 1917. *Effective September 28, 1917* (except as noted on pages 9 and 10, where reference is made to note O, and in other individual items).

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25481.

(Stamped:) Received; Interstate Commerce Commission; 58586; Aug 15 1917; Division of Tariffs.

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Page 4.

## OKLAHOMA (\*\*\*) PRODUCING POINTS.

POINTS	LOCATION RAILROAD	GROUP LOCATION
Drumright (See Notes 2***)	A. T. & S F.	(Cushing (A. T. & S. F.) (rate plus one cent (per one hundred (pounds

Page 5.

## RULES AND CONDITIONS.

SUBJECT	ITEM NO.	RULES
Minimum weights on commodities in tank cars.	90-A *	<p>1. The weights and charges on shipments in tank cars, shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-L, E. B. Boyd's I. C. C. No. A-785, or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections 2, 3 and 4—unless the weight carrying capacity of the car trucks will govern as a minimum.</p> <p>2. When shipments of Inflammable Liquids, subject to Section 1825, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.</p>

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## MISCELLANEOUS RATES.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-L, E. B. Boyd's I. C. C. No. A-785), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum (\*\*\*).

TO TEXAS STATIONS ***	Rates in cents per 100 pounds.
Item No. 454-B cancels 454-A.	
Cushing.....Okla.	

# 1104 GULF REFINING COMPANY, A CORPORATION, vs.

## T. & N. O. R. R. STATIONS:

West Port Arthur.....	19½
Port Arthur. . . . .	19½

## T. & FT. S. RY. STATIONS:

All Stations.....	19½
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Page 18.

## MISCELLANEOUS RATES.

Item No.	COMMODITY	FROM Oklahoma Points	TO	Rates in cents per 100 lbs.
425-B	Gasoline in tank cars minimum weight as provided in Item No. 90, or reissues.....	Kiefer	Port Arhur, Tex. West Port Arthur, Tex.	33
	Reissue; effective August 29, 1917, in Supplement No. 6.			

*Supplement No. 8 to I. C. C. No. 1186.* Cancels Supplement No. 7. Supplement No. 8 contains all changes from the original tariff that are effective on the date hereof.

## SOUTHWESTERN LINES TARIFF NO. 79

For Individual Lines Tariff Numbers, see page 2.

### *Supplement No. 8*

Cancels Supplement No. 7. Supplement No. 8 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads, (see page 8 of tariff) from Oklahoma producing points (shown on pages 9 to 11, inclusive, of tariff, as amended) to interstate points (see pages 12 to 14, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Frye's I. C. C. No. 12), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by

the carriers parties to this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items, herein.

Issued September 29, 1917. *Effective November 12, 1917* (except as noted on page 4, where reference is made to note 20; on page 16, where reference is made to note 4, and in other individual items).

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25585.

(Stamped:) Received; Interstate Commerce Commission; 64955; Sep 29 1917; Division of Tariffs.

Page 4.

OKLAHOMA (\*\*\*) PRODUCING POINTS.

POINTS					Railroad Location	Group Location				
*	*	*	*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*	*	*	*
Drumright (See Notes 2 ***)					A. T. & S. F. (Cushing (A.T.&S.F.) (rate plus one cent (per one hundred pounds)					*
*	*	*	*	*	*	*	*	*	*	*

Page 5.

RULES AND CONDITIONS.

SUBJECT	Item No.	RULES.
Minimum weights on commodities in Tank Cars	90-A cancels 90	1. The weights and charges on shipments in tank cars, shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-L, E. B. Boyd's I. C. C. No. A-785, or reissues), at actual or estimated weights provided in current Western Classification—except as provided in Sections 2, 3 and 4—unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.
Reissue; effective September 28, 1917, in Supplement No. 7.		2. When shipments of INFAMMABLE LIQUIDS, subject to Section 1825. Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.
		* * * * *



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## MISCELLANEOUS RATES.

Item No.	COMMODITY	FROM Oklahoma Points	TO	Rates in cents per 100 lbs.
425-B	Gasoline in tank cars, minimum weight as provided in Item No. 90, or reissues.....	Kiefer	Port Arthur, Tex. West Port Arthur, Tex.	33
Relissue: effective August 29, 1917, in Supplement No. 6.				

Page 19.

## MISCELLANEOUS RATES.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-L, E. B. Boyd's I. C. C. No. A-785), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum (\*\*\*).

TO TEXAS STATIONS * * *				Rates in cents per 100 pounds.
Item No. 454-C	cancels 454 B.	FROM OKLAHOMA POINTS.		
	Cushing			
T. & N. O. R. R. STATIONS:				
	West Port Arthur.....			19½
	Port Arthur. . . . .			19½
T. & FT. S. RY. STATIONS:				
	All stations.....			19½

*Supplement No. 11 to I. C. C. No. 1186.* Cancels Supplement No. 10. Supplements Nos. 8, 9 and 11 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 9 suspends portions of Supplement No. 7.

## SOUTHWESTERN LINES TARIFF NO. 79

For Individual Lines Tariff Numbers, see page 2.

*Supplement No. 11.*

Cancels Supplement No. 10. Supplements Nos. 8, 9 and 11 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 9 suspends portions of Supplement No. 7.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads, (see page 8 of tariff) from Oklahoma producing points (shown on pages 9 to 11, inclusive, of tariff, as amended) to interstate points (see pages 12 to 14, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items, herein.

Issued December 12, 1917. *Effective January 24, 1918* (except as noted on page 3 where reference is made to note 15, and on page 7 where reference is made to note 4 and in other individual items).

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25730.

(Stamped:) Received; Interstate Commerce Commission; 1574; Dec 15 1917; Division of Tariffs.

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Page 8.

#### MISCELLANEOUS RATES.

\* \* \* \* \*

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-L, E. B. Boyd's I. C. C. No. A-785), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum (\*\*\*).

TO TEXAS STATIONS ***										Rates in cents per 100 pounds
Item No. 452-A cancels 452.										
•	•	•	•	•	•	•	•	•	•	•
					FROM					
•	•	•	•	•	•	•	•	•	•	•
					Jenks. . . . .	Okla.				
					Kiefer. . . . .	Okla.				
Port Arthur . . . . .										19½
•	•	•	•	•	•	•	•	•	•	•

*Supplement No. 13 to I. C. C. No. 1186.* Cancels Supplement No. 11. Supplements Nos. 8, 12 and 13 contain all changes from the original tariff that are effective on the date hereof. Supplement No. 12 suspends portions of Supplement No. 7.

#### SOUTHWESTERN LINES TARIFF NO. 79

For Individual Lines Tariff Numbers, see page 2.

##### *Supplement No. 13*

Cancels Supplement No. 11. Supplements Nos. 8, 12 and 13 containing all changes from the original tariff that are effective on the date hereof. Supplement No. 12 suspends portions of Supplement No. 7.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads, (see page 8 of tariff) from Oklahoma producing points (shown on pages 9 to 11, inclusive, of tariff, as amended) to interstate points (see pages 12 to 14, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items, herein.

Issued February 14, 1918. *Effective March 28, 1918* (except as noted in individual items).

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25820.

(Stamped:) Received; Interstate Commerce Commission; 8886; Feb 15 1918; Division of Tariffs.

Page 3.

GENERAL APPLICATION OF RATES.

Item No.	SUBJECT	APPLICATION
5-A	Commodity	Where reference is made to this Item the rates
* cancels	Descriptions.	apply on: (For rates, see pages *** 39 to 43, inclusive, ***).
5		Petroleum Oil and its Products *** listed under head of "Petroleum and Petroleum Products," and rated Fifth Class or lower in current Western Classification *** in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 90-A, or re-issues.
		NOTE.—* * * Eliminate: Liquefied Petroleum Gas, now shown in Western Classification, under caption: "Petroleum or Petroleum Products."

Page 8.

MISCELLANEOUS RATES.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-M, E. B. Boyd's I. C. C. No. A-826), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum (\*\*\*).

TO TEXAS STATIONS \* \* \*

Rates in cents  
per 100 pounds.

Item No. 452-B cancels 452-A.

FROM

Jenks. . . . .Okla.  
Kiefer . . . . .Okla.

Port Arthur . . . . . 19½

**Government's Exhibit 41.**

Only two supplements to this tariff will be in effect at any time.

*I. C. C. No. 1129.* Cancels *I. C. C. No. 1186* Except those portions under suspension in Investigation and Suspension Docket No. 1146, as per Supplement No. 12.

**SOUTHWESTERN LINES TARIFF NO. 79-A**

Cancels Southwestern Lines' Tariff No. 79, except those portions under suspension in Investigation and Suspension Docket No. 1146, as per Supplement No. 12. For Individual Lines Tariff Numbers, current and cancelled, see page 2.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads (see page 8), from Oklahoma producing points and Ft. Smith, Ark. (shown on pages 10 to 13, inclusive), to interstate points (see pages 13 to 16, inclusive).

Governed, except as otherwise provided herein, by Western Classification No. 54 (R. C. Fyfe's *I. C. C. No. 12*), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of rule 77 of Interstate Commerce Commission. Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties of this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Issued February 28, 1918. *Effective April 27, 1918* (except as noted on page 11 where reference is made to note 15).

Changes which result from additions of or abandonment of stations and station facilities contained in this tariff are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 250 of January 8, 1918,

without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25849. C. F. 41860.

(Stamped:) Received: Interstate Commerce Commission; 10291; Mar 1 1918; Division of Tariffs. Cancelled by-I. C. C. No. 1253; Effective 12-31-1918.

Pages 3, 4, 5 and 7.

### PARTICIPATING CARRIERS.

NAMES OF CARRIERS		Under Powers of Attorney to F. A. Leland Agent.
		FX 1, No.
* Atchison, Topeka and Santa Fe Ry. Co. (The)...	33	..
* Gulf, Colorado & Santa Fe Ry. Co.....	39	*
* Kansas City Southern Ry. Co. (The).....	24	*
* Midland Valley R. R. Co.....	18	*
* St. Louis-San Francisco Ry. Co.....	137	*
* Houston & Texas Central R. R. Co.....	16	*
* Texas & New Orleans R. R. Co.....	12	*
* Texarkana & Ft. Smith Ry. Co.....	20	*

Page 10.

### OKLAHOMA (\*\*\*) PRODUCING POINTS.

POINTS	Railroad Location	Group Location	*
Cushing. . . . .	A. T. & S. F.	A.....	*
Drumright. . . . .	A. T. & S. F.	(Cushing (A. T. & S. F.) rate (plus one cent per one hun- (dred pounds.	*
(See Note *** 2.)			*

# 1112 GULF REFINING COMPANY, A CORPORATION, vs.

Page 11.

## OKLAHOMA (\*\*\*) PRODUCING POINTS—\*\*\*

POINTS	Railroad Location	Group Location	*
* * * *	* * *	* * *	*
Jenks. ....	M. V. ....	A. ....	*
* * * *	* * *	* * *	*
Kiefer. ....	(St. L.-S. F. ....	A. ....	*
(***)	(M. V.		
* * * *	* * *	* * *	*

Page 13.

NOTE 2.—Rates from Drumright \* \* \* apply via Cushing, Okla., and A. T. & S. F. Ry. only.

Page 17.

## GENERAL APPLICATION OF RATES.

Item. No.	SUBJECT	APPLICATION.
* * *	* * *	* * *
5	Commodity Descriptions	Where reference is made to this item the rates apply on: (For rates, see pages *** 39 to 43, inclusive, ***).
		Petroleum Oil and its Products * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class or lower in current Western Classification * * * in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 90, or re-issues.
* * *	* * *	* * *

Page 18.

## RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
Extent to which rates are governed by Western Classification.	57	<p>The ratings, rules and regulations, estimated and minimum weights, shipping and packing requirements, allowances and privileges, or other provisions or conditions authorized by this tariff abrogate and supersede those of Western Classification, in conflict.</p> <p>When the ratings in this tariff are silent as to rules and regulations, estimated and minimum weights, shipping and packing requirements, allowances and privileges or other provisions or conditions, the ratings which are prescribed in such commodity items shall be subject to the terms (including estimated and minimum weights, shipping and packing requirements, or other provisions or conditions), prescribed for in connection with the ratings in the current Western Classification on the same commodity.</p>



Page 19.

## RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
Minimum weights on commodities in tank cars.	90	<p>1. The weights and charges on shipments in tank cars, shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 4-M, E. B. Boyd's I. C. C. No. A-826, or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections 2, 3 and 4—unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.</p> <p>2. When shipments of Inflammable Liquids, subject to Section 1825, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.</p>

Pages 42, 43.

## PETROLEUM AND ITS PRODUCTS, AS DESCRIBED IN ITEM NO. 5, OR RE-ISSUES.

TO	FROM (See pages 10 to 13, inclusive.) Groups A *** Rates in cents per 100 pounds.
TEXAS POINTS (***)	
Port Arthur.....	39
West Port Arthur.....	39

Pages 55 and 59.

TO	Crude *** Petroleum Oil *** FROM (See pages 10 to 13, inclusive.) Groups A *** Rates in cents per 100 pounds.
TEXAS POINTS (***)	
Port Arthur.....	17½

1114 GULF REFINING COMPANY, A CORPORATION, vs.

West Port Arthur.....	17½
-----------------------	-----

Page 79.

MISCELLANEOUS RATES.

Item No.	COMMODITY	FROM (Oklahoma Points)	TO	Rates in cents per 100 lbs.
660	Gasoline in tank cars, minimum weight as provided in Item No. 90, or re-issues.....	Kiefer.....	Port Arthur, Tex West Port Arthur, Tex.	33

Page 81.

MISCELLANEOUS RATES.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-M, E. B. Boyd's 1 C. C. No. A-826), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the car trucks will govern as minimum (\*\*\*).

TO TEXAS STATIONS * * *				Rates in cents per 100 pounds.
Item No. 705.	FROM			
	Jenks. . . . .Okla.			
	Kiefer. . . . .Okla.			
	Port Arthur.....			19½

Item No. 715.

From Oklahoma Points.

Cushing.	
T. & N. O. R. R. STATIONS:	
West Port Arthur.....	19½
Port Arthur. ....	19½
T. & FT. S. RY. STATIONS:	
All stations.....	19½

*Special Supplement to I. C. C. Nos. shown herein*

**SPECIAL SUPPLEMENT TO TARIFFS**

Issued by F A. Leland, Agent.

Applying in connection with participating carriers shown in tariffs and supplements thereto enumerated herein.

**INCREASE IN FREIGHT RATES.**

Freight rates name din tariffs and supplements thereto, listed on pages 7 to 9, inclusive, are hereby increased to the rates shown in column 8 of rate table on pages 4 to 6, inclusive. (See application of rates, page 2.)

Increased joint rates and charges contained in this schedule are filed on one day's notice under authority of Interstate Commerce Commission's Fifteenth Section Order No. 666 of May 27, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

This schedule contains rates that are departures from the terms of the amended Fourth Section of the Act of Regulate Commerce under authority of the Interstate Commerce Commission, Fourth Section Order No. 7316, of May 27, 1918.

The form of this supplement is permitted by authority of the Interstate Commerce Commission, Special Permission No. 45950, of May 27, 1918.

Issued June 18, 1918. *Effective June 25, 1918.*

The rates made effective by this schedule are initiated by the President f the United States through the Director General, United States Railroad Administration, and apply to interstate traffic only.

This schedule is published and filed on one day's notice with the Interstate Commerce Commission under General Order No. 28 of the Director General, United States Railroad Administration, dated May 25, 1918, and amended June 12, 1918.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 26007.

(Stamped:) Received; Interstate Commerce Commission; 34213; Jun 21 1918; Division of Tariffs. *Supt. No. 4; I. C. C. No. 1219.*

\* \* \* \* \*

# 1116 GULF REFINING COMPANY, A CORPORATION, v.s.

Pages 2 and 4.

## RULES.

### RATES IN CENTS (EXCEPT CENTS PER CAR).

1. Where rates named in tariffs or prior supplements thereto, as enumerated herein, in cents per hundred pounds, per package, per ton, per shipment, or other unit (except rates in cents per car—see Rule 6) are included in the figures shown in Column A, the rates shown opposite thereto in Column B will apply.

### APPLICATION OF RATES.

Effective June 25, 1918, all rates then in effect named in tariffs enumerated herein and in prior supplements thereto, as indicated, to each of which tariffs this is a special supplement, are increased to the rates shown in Column B in Table of Rates on pages 4 to 6, inclusive, hereof. \* \* \*

TABLE OF RATES—SUBJECT TO APPLICATION OF RATES AND TO RULES, PAGE 2 \* \* \*  
(\* \* \*)

Over		A	But not over		B
*	*	*	*	*	*
*	*	17.39	*	17.79	22
*	*	*	*	*	*
*	*	19.39	*	19.79	24½
*	*	*	*	*	*
*	*	20.19	*	20.59	25½
*	*	*	*	*	*
*	*	32.99	*	33.39	41½
*	*	*	*	*	*
*	*	38.99	*	35.39	49
*	*	*	*	*	*
*	*	39.79	*	40.19	50

Page 7.

### LIST OF TARIFFS SUPPLEMENTED HEREBY.

NOTE.—The increases made by this supplement apply to the entire rates as named in the tariffs listed below, whether such rates are published as specific totals or are made up by use of differentials or arbitrarilers.

I. C. C. No.	Supplement No.	Southwestern Lines No.	Supplements Containing All Changes from the Original Tariff
*	*	*	*
1219	4	79-A	2, 3, 4
*	*	*	*

Rates and charges named in this supplement are not subject to increases shown in Special Supplement No. 4.

*Supplement No. 5 to I. C. C. No. 1219.* Supplements Nos. 2, 3, 4 and 5 contain all changes from the original tariff that are effective on the date hereof.

**"UNITED STATES RAILROAD ADMINISTRATION,  
W. G. McAdoo, Director General of Railroads"**

**SOUTHWESTERN LINES TARIFF NO. 79-A**

For Individual Lines Tariff Numbers, see page 2.

*Supplement No. 5*

Supplements Nos. 2, 3, 4 and 5 contain all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads (see page 8 of tariff), from Oklahoma producing points and Ft. Smith, Ark. (shown on pages 10 to 13, inclusive, of tariff, as amended), to interstate points (see pages 13 to 16, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 55 (R. C. Fyfe's I. C. C. No. 13), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties of this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Issued July 24, 1918. *Effective July 29, 1918.*

Published for the Director General of Railroads and filed on one day's notice with the Interstate Commerce Commission under Freight Rate Authority No. 96 of the Director, Division of Traffic, United States Railroad Administration, dated July 11, 1918.

The form of this supplement is permitted by authority of Interstate Commerce Commission Special Permission No. 47201 of July 18, 1918.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 26052.

(Stamped:) Received; Interstate Commerce Commission; 49097; Jul 27, 1918; Division of Tariffs.

**Page 2.**

Rates on Petroleum and Petroleum Products rated Fifth Class in current Western Classification are hereby increased four and one-half (4½) cents per 100 pounds on shipments moving exclusively via lines shown in Note A on page 3 hereof.

NOTE—This cancels application of Column B rate in Supplement No. 4 on the above articles on shipments moving exclusively via lines shown in Note A on page 3 hereof. (\*\*\*)

Page 3.

**NOTE A.**

Atchison, Topeka & Santa Fe Ry.

Gulf, Colorado & Santa Fe Ry.

Houston &amp; Texas Central R. R.

Kansas City Southern Ry.

Midland Valley R. R.

St. Louis-San Francisco Ry.

Texarkana & Ft. Smith Ry.

Texas & New Orleans R. R.

Rates and charges named in this supplement are not subject to increases shown in Special Supplement No. 4.

*Supplement No. 6 to I. C. C. No. 1219.* (Cancels Supplement No. 5) Supplements Nos. 2, 3, 4 and 6 contain all changes from the original tariff that are effective on the date hereof.

**"UNITED STATES RAILROAD ADMINISTRATION  
W. G. McAdoo, Director General of Railroads"**

**SOUTHWESTERN LINES TARIFF NO. 79-A**  
For Individual Lines Tariff Numbers, see page 2.

Supplement No. 6

(Cancels Supplement No. 5) Supplements Nos. 2, 3, 4

and 6 contain all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt, carloads (see page 8 of tariff), from Oklahoma producing points and Ft. Smith, Ark. (shown on pages 10 to 13, inclusive, of tariff, as amended), to interstate points (see pages 13 to 16, inclusive, of tariff).

Governed, except as otherwise provided herein, by Western Classification No. 55 (R. C. Fyfe's I. C. C. No. 13), or re-issues thereof.

The rates named in this tariff are subject to the conditions of the carrier's bills of lading.

By authority of rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties of this tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individu items herein.

Issued August 8, 1918. *Effective August 15, 1918.*

Published for the Director General of Railroads and filed on one day's notice with the Interstate Commerce Commission under Freight Rate Authority No. 96 of the Director, Division of Traffic, United States Railroad Administration, dated July 11, 1918.

Issued on one day's notice under special permission of the Interstate Commerce Commission No. 47226 of July 26, 1918.

The form of this supplement is permitted by authority of Interstate Commerce Commission Special Permission No. 47201 of July 18, 1918.

Issued by F. A. Leland, Agent, St. Louis, Mo.  
Authority No. 26075.



(Stamped:) Received; Interstate Commerce Commission; 51067; Aug 10 1918; Division of Tariffs.

Page 2.

Item No. 56.

Rates on Petroleum and Petroleum Products \* \* \* are hereby increased four and one-half (4½) cents per 100 pounds \* \* \*.

NOTE 2.—This cancels application of Column B rates in Supplement No. 4 on Petroleum and Petroleum Products rated Fifth Class in current Western Classification, \* \* \* on shipments moving \* \* \* via lines \* \* \* named in Note A on page 3 hereof.

Page 3.

NOTE A.

[illegible]

**Government's Exhibit 50.**

**Government's Exhibit 42.**

Only three supplements to this classification will be in effect at any time.

C. R. C. No. 11 (Cancels C. R. C. No. 10 and supplements)  
S. B. No. 1 *I. C. C. No. 13* (Cancels I. C. C. No. 12 and supplements).

P. S. C. Mo. No. 4 (Cancels P. S. C. Mo. No. 3 and supplements); P. U. C. Colo. No. 4 (Cancels P. U. C. Colo. No. 3 and supplements); P. S. C. Wyoming No. 3 (Cancels P. S. C. Wyoming No. 2 and supplements); P. U. C. Idaho No. 3 (Cancels P. U. C. Idaho No. 2 and supplements); Illinois P. U. C.

No. 2 (Cancels Illinois P. U. C. No. 1 and supplements); Corporation Commission Oklahoma No. 2 (Cancels Corporation Commission Oklahoma No. 1 and supplements); S. C. C. New Mexico No. 2 (Cancels S. C. C. New Mexico No. 1 and supplements); P. U. C. Utah No. 1.

### THE WESTERN CLASSIFICATION NO. 55.

(Cancels the Western Classification No. 54 and supplements)

Increased ratings, rules and regulations in this classification are filed under authority of the Interstate Commerce Commission fifteenth section orders number 195 of December 27, 1917, and number 233 of January 10, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

Applying on freight traffic covered by tariffs issued subject thereto.

Issued February 1, 1918. *Effective April 1, 1918.*

Issued and filed with the following commissions by R. C. Fyfe, Agent for the Individual Carriers shown herein: Interstate Commerce Commission, Board of Railway Commissioners for Canada, United States Shipping Board, Public Service Commission of Missouri, Public Utilities Commission of Colorado, Public Service Commission of Wyoming, Public Utilities Commission of Idaho; Illinois Public Utilities Commission, Corporation Commission of Oklahoma, State Corporation Commission of New Mexico, Michigan Railroad Commission, Public Utilities Commission of Utah.

The Western Classification Committee, W. E. Prendergast, H. C. Bush, R. C. Fyfe, Chairman, Transportation Building, Chicago. Copyright, 1918, by R. C. Fyfe, Chairman.

(Stamped:) Received: Interstate Commerce Commission; 7330; Feb. 5, 1918; Division of Tariffs. Cancelled by-I. C. C. No. 14; Effective 12-30-1919.

\* \* \* \* \*

Page i.

### TABLE OF CONTENTS OF THE WESTERN CLASSIFICATION NO. 55. I. C. C. No. 13.

SUBJECT	Page No.
Index to Rules.....	xli to xlv
Rules and Conditions.....	1 to 98

# 1122 GULF REFINING COMPANY, A CORPORATION, vS.

Pages i, iv, v, vii & viii.

This classification is filed with the Interstate Commerce Commission by R. C. Fyfe, Chicago, Ill., as agent for the following lines:

Atchison, Topeka & Santa Fe Ry.....	FX1 No. 63
Gulf, Colorado & Santa Fe Ry.....	FX1 No. 40
Houston & Texas Central R. R.....	FX1 No. 23
Kansas City Southern Ry.....	FX1 No. 34
Midland Valley R. R.....	FX1 No. 26
St. Louis-San Francisco Ry. Co.....	FX1 No. 155
St. Louis, San Francisco and Texas Ry. Co..	FX1 No. 31
Texarkana & Ft. Smith Ry.....	FX1 No. 28
Texas & New Orleans R. R.....	FX1 No. 22

Pages xii, xiii and xiv.

## INDEX TO RULES.

	Rule No.	Page No.
Commodities in Tank Cars.....	32	15
Dangerous Articles other than explosives.....	44	50
Inflammable articles.....	44	50
Transportation of Dangerous Articles other than explosives..	44	50

Pages 1 and 15.

## RULES AND CONDITIONS OF THE WESTERN CLASSIFICATION.

### RULE 32.

Section 5. When shipments of inflammable liquids subject to Section 1825, Rule 44, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank to cover the difference between the dome capacity and the two (2) per cent outage.

Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

## RULE 44.

*Interstate Commerce Commission*

## REGULATIONS

for the

*Transportation of Dangerous Articles Other Than  
Explosives by Freight.*

Prescribed under the act of March 4, 1909, and section 15 of the act to regulate commerce, as amended June 18, 1910. Revisor formulated and published July 2, 1914, effective October 1, 1914, and superseding regulations published January 1, 1912.

## GENERAL NOTICE.

1701. Special precautions are necessary in preparing for shipment packages of dangerous articles other than explosives, and in handling these packages during transit. Any failure of a shipper, or of a carrier, to perform the duties imposed upon him in this respect may be the actual or a contributory cause not only of destructive fires but of disastrous explosions, since large quantities of explosives are transported frequently through thickly populated districts and in trains containing cars loaded with other dangerous articles.

1702. Sections 235 and 236 of the act of March 4, 1909, require the shipper of dangerous articles to describe and mark his packages properly and to inform the agent of the carrier of the true character of their contents. Heavy penalties are provided for the shipper who, knowingly, solicits the transportation of dangerous articles without complying with these requirements, as well as for the carrier that knowingly transports them.

1703. To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation by land in interstate commerce of dangerous articles other than explosives, the following regulations are prescribed to define these articles for freight transportation purposes, to state the precautions that must be observed by the shipper in preparing them for shipment, and by the carrier in handling them while in transit. It is the duty of each such carrier and shipper to make the prescribed regulations effective and to thoroughly instruct their employees in relation thereto.

1704. These regulations apply to all shipments of dangerous articles other than explosives, including carriers' material and supplies.

1705. Specifications as to containers, methods of packing for shipment, etc., will be considered and prescribed from time to time. Orders prescribing such specifications will be given effective dates as conditions and investigations may appear to warrant.

1706. The Bureau for the Safe Transportation of Explosives and other Dangerous Articles, hereinafter called Bureau of Explosives, organized by the railways under the auspices of the American Railway Association, is an efficient bureau in charge of an expert chief inspector. This bureau will make inspections and conduct investigations and will confer with manufacturers and shippers with a view to determining what specifications and regulations will within reasonable limits afford the highest degree of safety in packing and preparing these dangerous articles for shipment and in transporting the same. The Commission will seek to avail itself of the expert knowledge thus developed and, in formulating amendments to these regulations or specifications supplemental thereto, while not bound thereby, will give due weight to such expert opinions.

#### GENERAL RULES.

1711. Carriers that are subject to the act to regulate commerce must not receive shipments of articles defined as dangerous by these regulations when the shipments are not packed, marked, labeled, described, and certified as prescribed herein. The method of manufacture and packing of articles defined as dangerous by these regulations, so far as it affects safe transportation, must be open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives.

1712. All shipments of articles subject to these regulations offered for transportation in interstate commerce must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing.

The same description of contents must be marked plainly on the outside of each package.

In less-than-carload shipments each package must be marked also to show plainly the name and address of the consignee. This address, the name of contents, and the required label or "no label required" marking, should be as near together as practicable.

1713. All shipments of articles defined as dangerous by these regulations, and for which detailed instructions for pack-

ing are not given herein, must be securely packed in containers strong enough to stand without rupture or leakage of contents all ordinary shocks incident to reasonably careful handling during transit. It is the duty of shippers, where leakage from their shipping containers is known to be a probable source of fire or material damage to other freight, to exercise special care in constructing shipping containers for such articles, even though their names do not appear in the list of dangerous articles, paragraph 1807.

1714. Carriers must forward shipments of dangerous articles other than explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carriers' property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

1715. (a) *Serious violations of these regulations, such as the discovery of leaking or broken packages of dangerous articles, and accidents or fires in connection with the transportation or storage on carrier's property of dangerous articles, must be reported by the carrier to the chief inspector of the Bureau of Explosives, 30 Vessey Street, New York City.*

(b) Consignees should report promptly to the chief inspector, Bureau of Explosives, all instances of broken or defective containers in shipments of dangerous articles received by them.

#### SECTION I. INFORMATION AND DEFINITIONS.

1800. For transportation purposes dangerous articles other than explosives are divided into the following groups:

1. *Forbidden articles.*
2. *Acceptable articles.*

##### GROUP 1.—FORBIDDEN ARTICLES.

1801. The following are *forbidden articles*:

(a) Outside packages containing in the same compartment interior packages, the mixture of whose contents would be liable to cause a dangerous evolution of heat, gas, or corrosive materials.

(b) Cylinders containing gases capable of combining chemically.

(c) Packages containing dangerous articles in a leaking condition or in such an insecure condition as to make leakage probable during transit.

(d) Rags or cotton waste oily with more than 5 per cent of vegetable or animal oil, or wet rags.

(e) Charcoal screenings from wet charcoal, or wet screenings, or screenings that have been wet. (See par. 1833 (c).)

(f) Dangerous articles not properly packed, marked, labeled, described, and certified.

(g) Iron sponge and spent oxide that has not been properly oxidized during manufacture.

GROUP 2.—ACCEPTABLE ARTICLES.

Definitions

*Inflammable Liquids—Red Label.*

1802. This group includes any liquid or liquid mixture that gives off inflammable vapors (as determined by flash point from Tagliabue's open cup tester, as used for test of burning oils) at or below a temperature of 80° F.

*Inflammable Solids—Yellow Label.*

1803. This group includes all substances other than those classified as explosives that are liable under conditions incident to transportation to cause fires by self-ignition through friction, through absorption of moisture, or through spontaneous chemical changes.

*Oxidizing Materials—Yellow Label.*

1804. This group includes all substances, such as chlorates, permanganates, peroxides, and nitrates, that yield oxygen readily to stimulate the combustion of organic matter.

*Corrosive Liquids—White Label.*

1805. This group includes the strong mineral acids (in strength greater than one-half concentrated, i. e., 47 per cent sulphuric, 34 per cent nitric, 20 per cent hydrochloric) and other strongly corrosive liquids that are liable to cause fires when mixed with chemicals or with organic matter, or are liable, in case of leakage from their shipping containers, to damage other freight materially.

*Compressed Gases—Red or Green (Gas) Label.*

1806. This group includes all inflammable or non-inflammable gases assembled for shipment under pressure exceeding 25 pounds per square inch, except when such gases are in cylinders or tubes not exceeding  $\frac{7}{8}$  inch outside diameter and of not more than 4 fluid ounces water capacity.

LIST OF PRINCIPAL DANGEROUS ARTICLES.

1807. (a) The following list shows the names of well-known articles in general use, other than explosives, that are



dangerous; the kind of label required on outside packages; the quantities that may be shipped in one outside package without a label when certified and marked "No label required," and the label exemptions on account of specified packing. (See column 5 of list.)

(b) When a shipment described under a name not in the following list is defined as a dangerous one by paragraphs 1802 to 1806, inclusive, the shipper must inform the carrier of the fact by use of the proper label prescribed herein, and the shipping order must show the certificate prescribed by paragraph 1867. The maximum quantity of any such article shipped in one outside package, without label, when certified and marked "No label required," except as specified herein, must not exceed the limit prescribed by column 3 of the list for dangerous articles of similar flash point or characteristic.

(c) Inflammable liquids as defined by paragraph 1802, in securely closed glass, earthenware, or metal containers of not exceeding one pint capacity each, when flash point is 20° F., or lower, and of not exceeding one quart capacity when flash point is above 20° F., packed and cushioned in fiberboard or corrugated strawboard containers, wooden boxes, kegs, or barrels, complying with shipping container specifications that apply, may be shipped without labels when certified and marked "No label required."

(d) A shipment described under a definite and proper name not in the following list and on a shipping order with no notation as to labels applied and no shipper's certificate, will be assumed by the carrier in the absence of knowledge to the contrary, to be not dangerous under these regulations.

(e) When articles described under names in the following list marked (\*) are not dangerous under the regulations, the shipper must, unless otherwise provided in said list, state on his shipping order, as a part of the description of such article "No label required," and must also furnish the certificate prescribed by paragraph 1867 and mark the package "No label required."

(f) When several dangerous articles are placed in one outside package without violating these regulations, labels must be applied, when the combined quantity of the articles of any one group exceeds the lowest limit prescribed by column 3 for any of the articles of that group that are included.

(g) When dangerous articles requiring the red label are shipped in the same outside package with dangerous articles requiring yellow or white labels, the outside package must be labeled with the red label only.

## LIST OF PRINCIPAL DANGEROUS ARTICLES.

1 Names of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
*Acetate, amly.....	Inf. L.....	70-80	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
Acetate, ethyl.....	do.....	40	do.....	Do.
Acetate, methyl.....	do.....	40	do.....	Do.
Acetone (ethyl methyl ketone).	do.....	35	do.....	Do.
*Acid, hydrochloric (muriatic).	Cor. L.....	.....	White.....	Para. 1805, 1851, 1852 and 1856.
Acid, hydrofluoric.....	do.....	.....	do.....	Para. 1851, 1852 and 1854.
Acid, nitric (mixed acid).....	do.....	.....	do.....	Mixed nitric and sulphuric acids, par. 1858.
*Acid, nitric.....	do.....	.....	do.....	Para. 1805, 1851, 1852 and 1857.
*Acid, sulphuric.....	do.....	.....	do.....	Para. 1805, 1851, 1852 and 1856.
Alcohol.....	Inf. L.....	57-65	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
Alcohol, denatured.....	do.....	40-60	do.....	Do.
Alcohol, wood.....	do.....	45	do.....	Do.
Ammonium perchlorate.....	Oxi. M.....	.....	Yellow.....	Para. 1822 and 1841.
Barium, chlorate of.....	do.....	.....	do.....	Do.
Barium, nitrate of, in bags.....	do.....	.....	do.....	Para. 1822 and 1841. (See Nitrates.)
Barium peroxide (binoxide, dioxide).	do.....	.....	do.....	Para. 1822 and 1841.

Benzol (benzene).....	Inf. L.....	20	1 gallon.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
Benzine.....	do	10	do	do	Do.
Bromine.....	Cor. L.....		5 pints.....	White.....	Par. 1853.
Bronzing liquid.....	Inf. L.....	0-70	1 gallon.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
Burak cotton.....	Inf. S.....		No exemption.....	Yellow.....	Par. 1837.
Calcium phosphide.....	do		do	do	Par. 1835.
Carbon bisulphide.....	Inf. L.....	10	5 pounds.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
Celluloid scrap.....	Inf. S.....		No exemption.....	Yellow.....	Par. 1839.
Cement, leather.....	Inf. L.....	10	1 gallon.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
•Cement, liquid, n. o. s.....	do	0-80	do	do	Do.
•Cement, roofing (liquid).....	do	0-80	do	do	Do.
Cement, rubber.....	do	10	do	do	Do.
Charcoal, wood, ground or pulverized.....	Inf. S.....		100 pounds.....	Yellow.....	(Par. 1833. Charcoal "in bottles," "in boxes," "in barrels," or "in tablets," "case-hardening charcoal," "animal charcoal," or "bone charcoal" is exempt from label and certificate requirements, when so described. Lump charcoal made by old kiln or pit method which provides long air exposure before shipment is exempt from label and placard requirements when certified and marked "No label required" or "No placard required.")
•Charcoal, wood, lump.....	do		2,000 pounds.....	do	Par. 1833.
Charcoal, wood, screenings.....	do		No exemption.....	do	Para. 1822 and 1841.
Chlorates, n. o. s.....	Oxi. M.....		25 pounds.....	do	
Chloride of phosphorus.....	Cor. L.....		No exemption.....	White.....	Par. 1855.
Chlorides, anhydrous, liquid.....	do		do	do	Do.
Chloride of sulphur.....	do		do	do	Para. 1822, 1851, 1852 and 1855.
•Cleaning fluid (or liquid).....	Inf. L.....	0-80	1 gallon.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
•Coal-tar light oil.....	do	0-80	do	do	Do.
•Coal-tar naphtha.....	do	0-80	do	do	Do.
Collodion.....	do	10	do	do	Do.
Cologne spirits (alcohol).....	do	60	do	do	Do.
Columbian spirits (alcohol, wood).....	do	45	do	do	Do.

†At or below.

\*See paragraph 1807 (e).





## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

Names of dangerous articles.	Group names and flash points—		Maximum quantity in one outside package which may be shipped with out a label when marked and certified "No label required"	Kind of label required when quantity exceeds the limits prescribed for "No label required."	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
	Inf. L.—Inflammable liquid.	Inf. S.—Inflammable solid.			
	Oxi. M.—Oxidizing material.	Cor. L.—Corrosive liquid.	Comp. G.— Compressed gas.		
1	2	3	4	5	
Nitrocellulose, wet with solvent.	Inf. L. ....	°F. 40	No exemption.....	Red.....	Must contain not less than 30 per cent by weight of a solvent whose flash point is not lower than 40° F. and must be packed in glass bottles (par. 1824) or in securely closed metal vessels that will stand the drop tests prescribed for metal barrels. (Specification No. 6.)
Nitrocellulose or nitrostarch, wet with 20 per cent water	Inf. S. ....	.....	do .....	Yellow.....	Par. 1834. Dry nitrocellulose and dry nitro-starch are high explosives.
*Oil, gas.....	Inf. L. ....	0-80	1 gallon.....	Red.....	Par. 1807 (c), 1822, 1824 to 1827.
*Oil described as "Oil," or "Oil, n. o. s.," or "Petroleum oil" or "Petroleum n. o. s."	do .....	0-80	do .....	do .....	Do.
Paint aluminum, bronzing or gold.	do .....	0-70	do .....	do .....	See Paint.
*Paint, liquid.....	do .....	0-80	do .....	do .....	Par. 1807 (c), 1822, 1824 to 1827. Inflammable paint, varnish, wood filler, or wood stain, liquid, in glass or earthenware vessels, or in metal cans, all packed in wooden barrels or

boxes and marked to show compliance with specifications (see par. 1822), are exempt from labels when marked and certified "No label required." Nonflammable paint is not subject to these packing requirements, but must be marked and certified "No label required." Dry paint is exempt from label and certificate requirements when properly so described.

Pentane.....	do	10	½ gallon.	do	Pars. 1807 (c), 1822, 1824 to 1827.
Percarbonate of ammonium.....	Oxl. M.....	.....	25 pounds.	Yellow.	Pars. 1822 and 1841.
Perchlorate of potash.....	do	.....	do	do	Do.
Potassium permanganate of potash.....	do	.....	do	do	Do.
Petroleum, crude (crude oil).....	Inf. L.....	0-80	1 gallon.	Red.	Pars. 1807 (c), 1822, 1824 to 1827.
Petroleum naphtha.....	do	10	do	do	Do.
Phosphorus trichloride.....	Cor. L.....	.....	No exemption.	White.	Pars. 1822 and 1855.
Phosphorus (white or yellow).	Inf. S.....	.....	do	Yellow.	Par. 1832.
Picric acid, wet with 10 per cent water.	do	.....	do	do	Par. 1834.
*Pol'sh, metal, liquid.	Inf. L.....	0-80	1 gallon.	Red.	Pars. 1807 (c), 1822, 1824 to 1827.
*Pol'sh, stove, liquid.	do	0-80	do	do	Do.
Potash, bromate.	Oxl. M.....	.....	25 pounds.	Yellow.	Pars. 1822 and 1841.
Potash, chlorate of.	do	do	do	do	Do.
Potash, nitrate of, in bags.	do	do	do	do	Pars. 1822 and 1841. (See Nitrates.)
*Potash described as "Potash" or "Potash, n. o. s."	do	do	25 pounds (in one shipment)	do	Pars. 1822 and 1841.
Potassium, metallic.	Inf. S.....	.....	No exemption.	do	Par. 1831.
Potassium sulphide (fused and ground).	do	.....	do	do	Par. 1835.
Pyroxylin plastic scrap.	do	.....	do	do	Par. 1839.
Pyroxylin solution.	Inf. L.....	0-80	1 gallon.	Red.	Pars. 1807 (c), 1822, 1824 to 1827.
*Rubber scrap, shoddy, regenerated or reclaimed rubber.	Inf. S.....	.....	10 pounds.	Yellow.	Par. 1840.
Saltpeter, in bags.	Oxl. M.....	.....	100 pounds (in one shipment)	do	Pars. 1822 and 1841.

\*See paragraph 1807 (e).

At or below.



## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1 Name of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
Shellac, varnish. Soda, chlorate of. Soda, nitrate of, in bags.	Inf. L.... Oxi. M.... do .....	1 gallon. 25 pounds. 100 pounds.	Red..... Yellow.... do .....	See Paint. Pars. 1822 and 1841. Pars. 1822 and 1841. (See Nitrates.)
Soda nitrite of. Sodium, metallic. Sodium, peroxide. Sodium sulphide (fused and ground). Strontia, nitrate of, in bags.	do .....	(in one shipment) 25 pounds. No exemption. do .....	do .....	Pars. 1822 and 1841. Par. 1831. Pars. 1822 and 1841. Par. 1835.
Sulphur, chloride of. Tin, bichloride, liquid (tetrachloride of). Toluol (toluene). Trinitrotoluol, wet with 10 per cent water.	Oxi. M.... Cor. L.... do .....	100 pounds. (in one shipment) No exemption. do .....	do .....	Pars. 1822 and 1841. (See Nitrates) Pars. 1822, 1851, 1852 and 1855. Par. 1855.
*Varnish. Zinc fine dust.	Inf. L.... Inf. S....	1 gallon. No exemption. 10 pounds.	Red..... Yellow.... do .....	Pars. 1807 (c), 1822, 1824 to 1827. Par. 1834. See Paint. Par. 1830.

\* See paragraph 1837 (c).

1 At or below.

## SECTION II. RULES FOR PACKING.

1821. Dangerous articles for which the yellow and white labels, respectively, are prescribed must not be packed in the same package, unless the bottle containing the corrosive liquid is cushioned by incombustible absorbent material in tightly closed metal containers, as prescribed by paragraph 1851. Cylinders of compressed gases must not be packed with other articles.

1822. (a) The construction of barrels, drums, boxes, cans, carboys, or other containers purchased subsequent to March 31, 1912, and used in shipping dangerous articles other than explosives must conform to specifications approved by the Interstate Commerce Commission that apply; and each container must be stamped, labeled or marked "Complies with I. C. C. Spec'n No. —," or equivalent marking as stated in the specification.

(b) In addition to standing the tests prescribed, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of damaged or broken packages on arrival at destination, must be reported to and recorded by the Bureau of Explosives, to the end that further use of any particular kind of package shown by experience to be inefficient may be prohibited by the Commission.

(c) Pending approval and promulgation by the Commission of specifications for types of shipping containers other than those for which specifications are published herein, containers may be used which after investigation made by the Bureau of Explosives, or by other competent testing laboratory in the presence of a representative of the Bureau of Explosives, are shown to possess the general efficiency and the protection against leakage of contents afforded by the standard types of corresponding capacity described in the specifications published herein, provided they are labeled or marked to show compliance with this requirement.

(d) Tank cars used for the shipment of dangerous articles other than explosives must comply with Master Car Builders' rules, and a tank car that leaks or one that has any defect which would make leakage during transit probable or that has not been tested and stenciled in compliance with Master Car Builders' rules must not be used for the shipment of any inflammable liquid.

(e) The tanks and their fittings must be examined by the shipper to see that they are in proper condition for loading.

Tanks must be examined for evidence of previous leaks; safety and outlet valves, dome covers and outlet-valve caps must be in proper condition before loading; after loading, tanks must not show any dropping of liquid contents at the seams or rivets, and should such dropping appear cars must be properly repaired; outlet valves must not permit more than a dropping of the liquid with valve caps off, otherwise valve must be reground and repaired. Dome covers and valve caps provided with suitable gaskets, must be properly screwed in place before cars are tendered to the carrier.

(f) Loaded tank cars tendered for shipment must be inspected by the carrier to see that they are not leaking, that the air and hand brakes, journal boxes, trucks and safety appliances are in proper condition for service, and that the car has been tested within limits prescribed by Master Car Builders' rules.

(g) Tests of all tank cars and their safety valves, as made in compliance with Master Car Builders' rules, must be certified by the party making the tests to the owner of the tank car and to the chief inspector, Bureau of Explosives; and this certification must show the initials and number of the tank car, the service for which it is suitable, the date of test, place of test, and by whom made.

#### INFLAMMABLE LIQUIDS—RED LABEL.

1824. (a) All inflammable liquids must be shipped in packages complying with specifications that apply as follows:

(b) In tightly closed metal cans of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11.

(c) In well-stoppered glass or earthenware vessels of not exceeding 1 gallon capacity, cushioned in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11, or in a well-stoppered glass or earthenware vessel of not exceeding 5 gallons capacity, well cushioned in a wooden box and not more than one such vessel in the box. The completed package must comply with swing and drop tests prescribed for boxed carboys by Specification No. 1.

(d) In well-stoppered glass, earthenware or metal vessels of not exceeding 1 pint capacity when flash point is 20° F., or lower, and 1 quart capacity when flash point is above 20° F., cushioned in fiber board or corrugated strawboard containers complying with Specification No. 24.

(e) In wooden kits of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2, or cushioned in wooden barrels or kegs complying with Specification No. 11.

(f) In metal-jacketed cans of not exceeding 10 gallons capacity, complying with Specification No. 23.

(g) In well-stoppered carboys of not exceeding 13 gallons capacity, cushioned in wooden boxes complying with Specification No. 1.

(h) In wooden barrels or kegs complying with Specification No. 10 when the flash point of the liquid is not lower than 20° F., or in wooden barrels or kegs complying with Specification No. 9 when the flash point is lower than 20° F., unless otherwise provided in the tariffs under which shipment moves.

(i) In metal barrels or drums complying with Specification No. 5.

(j) In tank cars complying with Master Car Builders' specifications, provided the vapor tension of the inflammable liquid corresponding to a temperature of 100° F. (90° F. Nov. 1 to Mar. 1) does not exceed 10 pounds per square inch. After May 1, 1915, a tank car must not be used for shipping inflammable liquids with flash point lower than 20° F., unless it has been tested with cold-water pressure of 60 pounds per square inch and stenciled as required by Master Car Builders' rules.

(k) Liquid condensates from natural gas or from casing-head gas of petroleum oil wells whose vapor tension at 100 degrees F. (90 degrees F. November 1st to March 1st) exceeds 10 pounds per square inch, must be described as Liquified Petroleum Gas. In measuring the vapor tension the container of the sample may be vented momentarily at a temperature of 70 degrees F. This product must be shipped in metal drums or barrels which comply with specification No. 5 and have a nominal capacity not exceeding 55 gallons; or in special insulated tank cars approved for this service by the Master Car Builders' Association, provided the vapor tension as above defined does not exceed 15 pounds per square inch. When the vapor tension as above defined exceeds 25 pounds per square inch, cylinders as prescribed for compressed gases (see paragraphs 1861 to 1863, inclusive) must be used.

When the condensate, blended or unblended with other products, has a vapor tension as above defined, not exceeding 10 pounds per square inch, and is shipped as "gasoline" in an ordinary tank car, 60-pound test class, defined in Master Car Builders' Association Specifications for Tank Cars, the safety valves of such a car must be set to operate at 25 pounds per

square inch, with a tolerance of one pound above or below; and the mechanical arrangements for closing the dome cover of this car must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided. The shipper must attach securely and conspicuously to the dome and to the dome cover white placards conforming to samples furnished by the Chief Inspector of the Bureau of Explosives, cautioning all railway and refinery employees not to remove the dome cover while interior pressure exists. The presence of these dome placards must be noted on the shipping order, and on the billing accompanying the car. This regulation must be made effective not later than May 15, 1916, at all points where this condensate from natural gas or "casinghead gas" is produced and shipped in a blended or unblended state; and the requirement for construction of dome covers and valve setting at 25 pounds must be made effective not later than January 1, 1917, for all tank car shipments of inflammable liquids with flash points lower than 20 degrees F.

When the "blowing" of safety valves of a car containing inflammable liquids is noted, any available means for cooling the car shell and contents, such as spraying with water, should be utilized; and, if practicable, the car should be moved to an isolated point, to minimize the fire risk. Covering the safety valves with wet cloth, wet blankets or wet gunny sacks will decrease the danger of igniting vapors escaping from a "blowing" valve. The burning of these vapors at the safety valve is not liable to cause an explosion. The valves are designed to permit, in emergencies, the burning in this way of the entire contents of the car.

(1) Carbon bisulphide in interior packages of capacity greater than  $\frac{1}{2}$  gallon must be shipped in metal cans of not less than 28 gauge, boxed, complying with Specification No. 2; or in metal barrels or drums complying with Specification No. 3, such barrels or drums after January 1, 1916, not to exceed 55 gallons capacity. Carbon bisulphide may also be shipped in tank cars complying with paragraph 1824 (j).

1825. (a) Packages containing inflammable liquids must not be entirely filled. Sufficient interior space must be left vacant to prevent leakage or distortion of containers, due to increase of temperature during transit. In all such packages, this vacant space must not be less than 2 per cent of the total capacity of the container. In tank cars the vacant space must not be less than 2 per cent of the total capacity of the tank,



- 44 Soap Oil,
- 45 Tanners' Oil,
- 46 Tobacco Oil,
- 47 Transformer Oil,
- 48 Wool Oil, or
- 49 Oil, not otherwise indexed by name, \* \* \* In tank cars,  
C. L., weight per gallon 6.6 lbs., subject to rule 32.. 5

#### UNITED STATES RAILROAD ADMINISTRATION

W. G. McADOO, Director General of Railroads.

Supplement No. 5 to C. R. C. No. 11 (Cancels Supplement No. 3 and Special Supplement No. 4) (Supplements Nos. 1 and 5 contain all changes)

Supplement No. 5 to S. B. No. 1 (Cancels Supplement No. 3 and Special Supplement No. 4) (Supplements Nos. 1 and 5 contain all changes)

*Supplement No. 5 to I. C. C. No. 13* (Cancels Supplement No. 3 and Special Supplement No. 4) (Supplements Nos. 1 and 5 contain all changes)

Supplement No. 5 to P. S. C. Mo. No. 4; P. U. C. Colo. No. 4; P. S. C. Wyoming No. 3; P. U. C. Idaho No. 3; Illinois P. U. C. No. 2; C. C. Oklahoma No. 2; S. C. C. New Mexico No. 2; Michigan R. C. No. 1; P. U. C. Utah No. 1 (Cancels Supplement No. 3 and Special Supplement No. 4) (Supplements Nos. 1 and 5 contain all changes)

#### THE WESTERN CLASSIFICATION No. 55

*Supplement No. 5.*

(Cancels Supplement No. 3 and Special Supplement No. 4)  
(Supplements Nos. 1 and 5 contain all changes)

"Departure from the terms of Commission's tariff regulations is authorized under special permission of the Interstate Commerce Commission, No. 47293, of August 16, 1918."

"Section 1, item 1, page 8, of this supplement is filed on one day's notice under Special Permission of the Interstate Commerce Commission No. 47309 of August 20, 1918; also published by the Director General of Railroads and filed on one day's notice with the Interstate Commerce Commission under Freight Rate Authority No. 418, of the Director, Division of Traffic, United States Railroad Administration, dated July 31, 1918."



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"Item 1, page 24, of this supplement issued in compliance with Order of Interstate Commerce Commission in Case No. 9371."

Applying on Freight Traffic covered by Tariffs issued subject thereto.

Issued August 24, 1918. *Effective August 29, 1918* (Except as noted in individual items)

Issued and filed with the following Commissions by R. C. Fyfe, Agent for the Individual Carriers shown herein: Interstate Commerce Commission, Board of Railway Commissioners for Canada, United States Shipping Board, Public Service Commission of Missouri, Public Utilities Commission of Colorado, Public Service Commission of Wyoming, Public Utilities Commission of Idaho, Illinois Public Utilities Commission, Corporation Commission of Oklahoma, State Corporation Commission of New Mexico, Michigan Railroad Commission, Public Utilities Commission of Utah.

#### THE WESTERN CLASSIFICATION COMMITTEE

W. E. PRENDERGAST, H. C. BUSH, R. C. FYFE,  
Chairman, Transportation Building, Chicago.

(Stamped:) Received; Interstate Commerce Commission; 52847; Aug 24 1918; Division of Tariffs.

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*Supplement No. 5.*

INTERSTATE COMMERCE COMMISSION REGULA-  
TIONS FOR THE TRANSPORTATION OF DAN-  
GEROUS ARTICLES OTHER THAN EX-  
PLOSIVES BY FREIGHT.

Prescribed under act of March 4, 1909, and section 15 of the act to regulate commerce, as amended June 18, 1910. Revision formulated and published July 2, 1914, effective October 1, 1914, and superseding regulations published January 1, 1912. Further revision formulated and published July 15, 1918, effective September 1, 1918, superseding the regulations published July 2, 1914.

GENERAL NOTICE.

1701. Special precautions are necessary in preparing for shipment packages of dangerous articles other than explosives, and in handling these packages during transit. Any failure of a shipper, or of a carrier, to perform the duties imposed upon him in this respect may be the actual or a contributory cause not only of destructive fires but of disastrous explosions, since large quantities of explosives are transported frequently through thickly populated districts and in trains containing cars loaded with other dangerous articles.

1702. Sections 235 and 236 of the act of March 4, 1909, require the shipper of dangerous articles to describe and mark his packages properly and to inform the agent of the carrier of the true character of their contents. Heavy penalties are provided for the shipper who knowingly solicits the transportation of dangerous articles without complying with these requirements, as well as for the carrier that knowingly transports them.

1703. To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation by land in interstate commerce of dangerous articles other than explosives, the following regulations are prescribed to define these articles for freight transportation purposes, to state the precautions that must be observed by the shipper in preparing them for shipment, and by the carrier in handling them while in transit. It is the duty of each such carrier and shipper to make the prescribed regulations effective and to thoroughly instruct their employees in relation thereto.

1704. These regulations apply to all shipments of dangerous articles other than explosives, including carriers' material and supplies.

1705. Specifications as to containers, methods of packing for shipment, etc., will be considered and prescribed from time to time. Orders prescribing such specifications will be given effective dates as conditions and investigations may appear to warrant.

1706. The Bureau for the Safe Transportation of Explosives and other Dangerous Articles, hereinafter called Bureau of Explosives, organized by the railways under the auspices of the American Railway Association, is an efficient bureau in charge of an expert chief inspector. This bureau will make inspections and conduct investigations and will confer with manufacturers and shippers with a view to determining what specifications and regulations will within reasonable limits afford the highest degree of safety in packing and preparing these dangerous articles for shipment and in transporting the same. The Commission will seek to avail itself of the expert knowledge thus developed and, in formulating amendments to these regulations or specifications supplemental thereto, while not bound thereby, will give due weight to such expert opinions.

### GENERAL RULES.

1711. Carriers that are subject to the act to regulate commerce must not receive shipments of articles defined as dangerous by these regulations when the shipments are not packed, marked, labeled, described, and certified as prescribed herein. The method of manufacture and packing of articles defined as dangerous by these regulations, so far as it affects safe transportation, must be open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives.

1712. All shipments of articles subject to these regulations offered for transportation in interstate commerce must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing.

The same description of contents must be marked plainly on the outside of each package. Tank cars must bear thereon a card showing proper name of contents.

In less-than-carload shipments each package must be

marked also to show plainly the name and address of the consignee. This address, the name of contents, and the required label or "no label required" marking, should be as near together as practicable.

1713. All shipments of articles defined as dangerous by these regulations, and for which detailed instructions for packing are not given herein, must be securely packed in containers strong enough to stand without rupture or leakage of contents all ordinary shocks incident to reasonably careful handling during transit. It is the duty of shippers, where leakage from their shipping containers is known to be a probable source of fire or material damage to other freight, to exercise special care in constructing shipping containers for such articles, even though their names do not appear in the list of dangerous articles, paragraph 1807.

1714. Carriers must forward shipments of dangerous articles other than explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station, or at interchange point, and consignees must remove such shipments from the carrier's property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

1715. (a) *Serious violations of these regulations*, such as the discovery of leaking or broken packages of dangerous articles, and *accidents or fires* in connection with the transportation or storage on carrier's property of dangerous articles, must be reported promptly by the carrier to the chief inspector of the Bureau of Explosives, 30 Vesey Street, New York City.

(b) Consignees should report promptly to the chief inspector, Bureau of Explosives, all instances of broken or defective containers in shipments of dangerous articles received by them.

1716. Containers that have been previously used for dangerous articles other than explosives, must have the old marks and labels removed before being used for the shipment of other articles.

## SECTION 1. INFORMATION AND DEFINITIONS.

1800. For transportation purposes dangerous articles other than explosives are divided into the following groups:

1. *Forbidden articles.*
2. *Acceptable articles.*

**GROUP 1.—FORBIDDEN ARTICLES.**

1801. The following are *forbidden articles*:

(a) Outside packages containing in the same compartment interior packages, the mixture of whose contents would be liable to cause a dangerous evolution of heat, gas, or corrosive materials.

(b) Cylinders containing gases capable of combining chemically.

(c) Packages containing dangerous articles in a leaking condition or in such an insecure condition as to make leakage probable during transit.

(d) Rags or cotton waste oily with more than 5 per cent of vegetable or animal oil, or wet rags, or wet textile waste, or wet paper stock.

(e) Charcoal screenings from wet charcoal, or wet screenings, or screenings that have been wet. (See par. 1833 (c).)

(f) Dangerous articles not properly packed, marked, labeled, described, and certified.

(g) Iron sponge that has not been properly oxidized during manufacture; and spent oxide or spent iron mass except when loaded in open steel cars.

**GROUP 2—ACCEPTABLE ARTICLES.****Definitions.***Inflammable Liquids—Red Label*

1802. This group includes any liquid or liquid mixture that gives off inflammable vapors (as determined by flash point from Tagliabue's open-cup tester, as used for test of burning oils) at or below a temperature of 80° F.

*Inflammable Solids—Yellow Label*

1803. This group includes all substances other than those classified as explosives that are liable under conditions incident to transportation to cause fires by self-ignition through friction, through absorption of moisture, or through spontaneous chemical changes.

*Oxidizing Materials—Yellow Label*

1804. This group includes all substances, such as chlorates, permanganates, peroxides, and nitrates, that yield oxygen readily to stimulate the combustion of organic matter.

*Corrosive Liquids—White Label*

1805. This group includes the strong mineral acids (in strength greater than one-half <sup>1</sup> concentrated, i. e., 47 per cent sulphuric, 34 per cent nitric, 20 per cent hydrochloric) and other strongly corrosive liquids that are liable to cause fires when mixed with chemicals or with organic matter, or are liable in case of leakage from their shipping containers, to damage other freight materially.

*Compressed Gases—Red or Green (Gas) Label*

1806. This group includes all inflammable or noninflammable gases assembled for shipment under pressure exceeding 25 pounds per square inch, except when such gases are in cylinders or tubes not exceeding seven-eighths inch outside diameter and of not more than 4 fluid ounces water capacity.

## LIST OF PRINCIPAL DANGEROUS ARTICLES.

1807. (a) The following list shows the names of well-known articles in general use, other than explosives, that are dangerous; the kind of label required on outside packages; the quantities that may be shipped in one outside package without a label when certified and marked "No label required," and the label exemptions on account of specified packing. (See column 5 of list.)

(b) When a shipment described under a name not in the following list is defined as a dangerous one by paragraphs 1802 to 1806, inclusive, the shipper must inform the carrier of the fact by use of the proper label prescribed herein, and the shipping order must show the certificate prescribed by paragraph 1867. The maximum quantity of any such article shipped in one outside package without label, when certified and marked, "No label required," except as specified herein, must not exceed the limit prescribed by column 3 of the list for dangerous articles of similar flash point or characteristics.

(c) Inflammable liquids as defined by paragraph 1802, in securely closed glass, earthenware, or metal containers of not exceeding 1 pint capacity each (ether 1 1/10 pounds), when flash point is 20° F., or lower, and of not exceeding one quart capacity when flash point is above 20° F., packed and cushioned in fiber board or corrugated strawboard containers, wooden boxes, kegs, or barrels, complying with shipping con-

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NOTE—Hand fire extinguishers containing non-liquefied gas for the purpose of expelling fire-extinguishing contents are excepted.

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(1) For express transportation, greater than one-fourth concentrated.

tainer specifications that apply, may be shipped without labels when certified and marked "No label required."

(d) A shipment described under a definite and proper name not in the following list and on a shipping order with no notation as to labels applied and no shipper's certificate, will be assumed by the carrier in the absence of knowledge to the contrary, to be not dangerous under these regulations.

(e) When articles described under names in the following list marked with (\*) are not dangerous under the regulations, the shipper must, unless otherwise provided in said list, state on his shipping order, as a part of the description of such article, for less than carloads, "No label required," and for carloads, state on his shipping order "No placard required," and must also furnish the certificate prescribed by paragraph 1867 and mark the packages "No label required."

(f) When several dangerous articles are placed in one outside package without violating these regulations, labels must be applied, when the combined quantity of the articles of any one group exceeds the lowest limit prescribed by column 3 for any of the articles of that group that are included.

(g) When dangerous articles requiring the red label are shipped in the same outside package with dangerous articles requiring yellow or white labels, the outside package must be labeled with red label only.



## LIST OF PRINCIPAL DANGEROUS ARTICLES.

1	2	3	4	5
Names of dangerous articles.	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required."	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
*Acetate, amyl.....	Inf. L.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Acetate, ethyl.....	do.....	do.....	do.....	Do.
Acetate, methyl.....	do.....	do.....	do.....	Do.
Acetone.....	do.....	do.....	do.....	Do.
*Acid hydrochloric (muriatic).....	Col. L.....	5 pints (6 pounds).....	White.....	Pars. 1805, 1851, 1852, and 1856.
Acid hydrofluoric.....	do.....	do.....	do.....	Pars. 1805, 1851, 1852, and 1854.
Acid hydrofluosilicic.....	do.....	do.....	do.....	Do.
Acid, nitrating (mixed acid).....	do.....	No exemption.....	do.....	Mixed nitric and sulphuric acids, par. 1855.
*Acid, nitric.....	do.....	do.....	do.....	Pars. 1805, 1851, 1852, and 1857.
*Acid, sulphuric (oil of vitriol).....	do.....	5 pints (9 pounds).....	do.....	Pars. 1805, 1851, 1852, and 1855.
Alcohol.....	Inf. L.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Alcohol, denatured.....	do.....	do.....	do.....	Do.
Alcohol, wood.....	do.....	do.....	do.....	Do.
Ammonium perchlorate.....	Oxi. M.....	25 pounds.....	Yellow.....	Pars. 1822 and 1841.
Barium, chlorate of.....	do.....	do.....	do.....	Do.
Barium, nitrate of, in bags.....	Oxi. M.....	100 pounds (in one shipment).....	do.....	Pars. 1822 and 1841. (See Nitrates.)
Barium peroxide (binoxide, dioxide).....	do.....	25 pounds.....	do.....	Pars. 1822 and 1841.
Benzol (benzene).....	Inf. L.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Benzine.....	do.....	do.....	do.....	Do.

Bromine.....	Cor. L.....	.....	5 pints.....	White.....	Par. 1853.
Bronzing liquid.....	Inf. L.....	0-70.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Burnt cotton.....	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1837.
Calcium phosphide.....	do.....	.....	do.....	do.....	Par. 1835.
Carbon bisulphide.....	Inf. L.....	†0.....	5 pounds.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Casinghead gasoline.....	do.....	†0.....	1 gallon.....	do.....	Do.
Casinghead naphtha.....	do.....	†0.....	do.....	do.....	Do.
Celluloid scrap.....	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1839.
Cement, leather.....	Inf. L.....	†0.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Cement, liquid, n. o. s.....	do.....	0-80.....	do.....	do.....	Do.
*Cement, roofing (liquid).....	do.....	0-80.....	do.....	do.....	Do.
Cement, rubber.....	do.....	†0.....	do.....	do.....	Do.
Charcoal, wood, ground, crushed, granulated or pulverized.....	Inf. S.....	.....	100 pounds..... (in one shipment).	Yellow.....	(Par. 1833, Charcoal "in bottles," "in boxes," "in barrels," or "in tablets," "case-hardening charcoal," "animal charcoal," or "bone char- coal" is exempt from label and certificate requirements, when so described. Lump charcoal made by old kiln or pit method which provides long air exposure before shipment is exempt from label and placard requirements when certified and marked "No label required" or "No placard re- quired." Par. 1833. Pars. 1822 and 1841.
*Charcoal, wood, lump.....	do.....	.....	2,000 pounds..... (in one shipment).	do.....	
Charcoal, wood, screenings.....	do.....	.....	No exemption.....	do.....	
Chlorates, n. o. s.....	Oxi. M.....	.....	25 pounds..... (in one shipment).	do.....	
Chloride of phosphorus.....	Cor. L.....	.....	No exemption.....	White.....	Par. 1855 (b).
Chlorides, anhydrous, liquid.....	do.....	.....	do.....	do.....	Do.
Chloride of sulphur.....	do.....	.....	do.....	do.....	Pars. 1822, 1851, 1852, and 1855.
Chromic acid.....	Oxi. M.....	.....	25 pounds (in one shipment).....	Yellow.....	Pars. 1822 and 1841 (e).
*Cleaning fluid (or liquid).....	Inf. L.....	0-80.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Coal-tar light oil.....	do.....	0-80.....	do.....	do.....	Do.
*Coal-tar oil.....	do.....	0-80.....	do.....	do.....	Do.
*Coal-tar naphtha.....	do.....	0-80.....	do.....	do.....	Do.
Cobalt resinates, precipitated.....	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1840 (b).
	Inf. L.....	†0.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.

\*See paragraph 1807 (e).

†At or below.

## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

Names of dangerous articles.	1	2	3	4	5
	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid Comp. G. — Compressed gas.		Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required."	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
Collodion.....	Inf. L.....	°F. 60	1 gallon.....	Red.....	Pars. 1807 (c), 1823, 1824 to 1827.
Cologne spirits (alcohol).....	do .....	60	do .....	do .....	Do.
Columbian spirits (alcohol, wood).....	do .....	45	do .....	do .....	Do.
*Compounds, paint or varnish removing, liquid.....	do .....	0-80	do .....	do .....	Pars. 1807 (c), 1822, 1824 to 1827.
*Compounds, polishing, liquid.....	do .....	0-80	do .....	do .....	Do.
*Compounds, type cleansing, liquid.....	do .....	0-80	do .....	do .....	Do.
*Compounds, vulcanizing.....	do .....	0-80	do .....	do .....	Do.
*Compounds, vulcanizing.....	Cor. L.....	.....	do .....	White.....	Pars. 1822, 1851, 1852, and 1855.
*Disillate.....	Inf. L.....	0-80	do .....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Dressing, leather.....	do .....	0-80	do .....	do .....	Do.
*Driers, paint or japan.....	do .....	0-80	do .....	do .....	Do.
*Electrolyte.....	Cor. L.....	.....	5 pints (9 pounds).....	White.....	Pars. 1805, 1851, 1852, and 1855.
*Eradicators, paint or grease, liquid.....	Inf. L.....	0-80	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Ether.....	do .....	70	5 pounds.....	do .....	Do.
*Extracts, liquid (flavoring).....	do .....	20-80	1 gallon.....	do .....	Pars. 1807 (c), 1822, 1824 to 1827. Bark, tanner's medicinal and wood extracts, are ex-

empt from label and certificate requirements when properly so described.

Pars. 1861 to 1863.

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Pars. 1861 to 1863.

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# Gases, compressed:

Acetylene (see Note 1).....

Argon.....

Air, compressed.....

Anhydrous ammonia.....

Blaugas.....

Carbonic acid.....

Chlorine.....

Coal gas.....

Dental.....

Hydrocarbon.....

Hydrogen.....

Liquefied petroleum gas.....

Nitrogen.....

Oxygen.....

Pinetich.....

Sulphur dioxide.....

Compressed gases, n. o. s.....

Gas drips (hydrocarbon).....

Gasoline (see Note 1).....

Inf. L.....

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## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1 Names of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked for "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
Liquefied petroleum gas.... Matches "Strike Anywhere". Naphtha..... •Naphtha distillate..... Nitrates, in bags.....	°F. Inf. L..... 70 Inf. S..... Inf. L..... 70 do..... 0-80 Oxi. M.....	No exemption..... do..... 1 gallon..... do..... 100 pounds..... (in one shipment).	Red..... Yellow..... Red..... do..... Yellow.....	Pars. 1807 (c), 1822, 1824 to 1827. Pars. 1822 and 1836. Pars. 1807 (c), 1822, 1824 to 1827. Do. Pars. 1822 and 1841. Nitrates in boxes, kegs, or barrels are exempt from label and certificate requirements when properly so described.
Nitrocellulose, wet with solvent.	Inf. L..... 40	No exemption.....	Red.....	Must contain not less than 30 per cent by weight of a solvent whose flash point is not lower than 40° F. and must be packed in glass bottles (par. 1824) or in securely closed metal vessels that will stand the drop tests prescribed for metal barrels. (Specification No. 5.)
Nitrocellulose or nitrostarch, wet with 20 per cent water •Oil, gas..... •Oil described as "Oil," or "Oil, n. o. s.," or "Petrole-	Inf. S..... Inf. L..... 0-80 do..... 0-80	do..... 1 gallon..... do.....	Yellow..... Red..... do.....	Par. 1834. Dry nitrocellulose and dry nitro-starch are high explosives. Pars. 1807 (c), 1822, 1824 to 1827. Do.



## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1 Names of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M. — Oxidizing material. Cor. L.—Corrosive liquid. Comp. G. — Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
Potash, nitrate of..... Potash described as "Potash," or "Potash, n. o. s." Potassium, metallic..... Potassium sulphide (fused, chipped or concentrated) Pyroxylin plastic scrap. Pyroxylin solution..... Pyroxylin solvent n. o. s..... Resinates, precipitated of cobalt Rubber scrap, shoddy, regenerated or reclaimed rubber	Oxi. M..... do ..... Inf. S..... do ..... do ..... Inf. L..... do ..... Inf. S..... do .....	25 pounds..... 25 pounds..... No exemption..... do ..... do ..... 1 gallon..... do ..... No exemption..... 10 pounds.....	Yellow..... do ..... do ..... do ..... do ..... Red..... do ..... Yellow..... do .....	Pars. 1822 and 1841 (See Nitrates.) Pars. 1822 and 1841. Par. 1831. Par. 1835. Par. 1839. Pars. 1807 (c), 1822, 1824 to 1827. Do. Par. 1840 (b). Par. 1840. Rubber scrap not ground is exempt from label and certificate requirements, when properly so described. Pars. 1822 and 1841.
Saltpeter, in bags..... Shellac, varnish..... Soda, chlorate of..... Soda, nitrate of, in bags..... Soda, nitrite of..... Sodium, metallic.....	Oxi. M..... Inf. L..... Oxi. M..... do ..... do ..... Inf. S.....	100 pounds..... 100 pounds..... 1 gallon..... 25 pounds..... 100 pounds..... 25 pounds..... No exemption.....	do ..... Red..... Yellow..... do ..... do ..... do ..... do .....	See Paint. Pars. 1822 and 1841. Pars. 1822 and 1841. (See Nitrates.) Pars. 1822 and 1841. Pars. 1822 and 1841. Par. 1831.



Sodium, peroxide.....	Oxi. M.....	.....	No exemption.....	Yellow.....	Pars. 1822 and 1841.
*Sodium sulphide (fused, chipped, or concentrated)	Inf. S.....	.....	do .....	do .....	Par. 1835.
*Solvent, gum or pyroxylin, n. o. s.	Inf. L.....	0-80	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Strontia, nitrate of, in bags..	Oxi. M.....	.....	100 pounds.....	Yellow.....	Pars. 1822 and 1841. (See Nitrates.)
Sulphur, chloride of.....	Cor. L.....	.....	(in one shipment)	White.....	Pars. 1822, 1852 and 1855.
Tetra-nitroaniline, wet with 20 per cent water.	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1834.
Tetra-nitromethylaniline, wet with 20 per cent water.	do .....	.....	do .....	do .....	Do.
Thn, bichloride, liquid (te- trachloride of).	Cor. L.....	.....	do .....	do .....	Par. 1855.
Toluol (toluene).....	Inf. L.....	55	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Trinitrotoluol, wet with 10 per cent water.	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1834.
*Varnish.....	Inf. L.....	0-80	1 gallon.....	Red.....	See Paint.
Zinc flue dust.....	Inf. S.....	.....	10 pounds.....	Yellow.....	Par. 1830.

At or below.

\*See paragraph 1807 (e).

## SECTION 2

## RULES FOR PACKING.

1821. Dangerous articles for which the yellow and white labels, respectively, are prescribed must not be packed in the same package, unless the bottle containing the corrosive liquid is cushioned by incombustible absorbent material in tightly closed metal containers, as prescribed by paragraph 1851. Cylinders of compressed gases must not be packed with other articles.

1822. (a) Barrels, drums, cylinders, boxes, cans, carboys, and other containers used hereafter for the shipment of dangerous articles other than explosives, must be made in accordance with approved specifications that apply and must be properly marked to show compliance with those specifications.

Such containers manufactured and used hereafter must be made in accordance with the specifications that apply as prescribed herein.

Such containers manufactured before the effective date of the specifications prescribed herein may be used if they were made in accordance with specifications previously approved.

Provided, that cylinders manufactured previous to the date on which specifications therefor were first made effective may be used if they comply with the requirements of paragraph 1861 of these regulations. Provided further, that carboys and metal barrels or drums manufactured and purchased prior to the date on which specifications were first made effective, may be used if they are in good condition and afford a package as secure as packages constructed under corresponding specifications.

(b) In addition to standing the tests prescribed, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of damaged or broken packages on arrival at destination, must be reported to and recorded by the Bureau of Explosives, to the end that further use of any particular kind of package shown by experience to be inefficient may be prohibited by the Commission.

(c) Pending approval and promulgation by the Commission of specifications for types of shipping containers other than those for which specifications are published herein, con-

tainers may be used which after investigation made by the Bureau of Explosives, or by other competent testing laboratory in the presence of a representative of the Bureau of Explosives, are shown to possess the general efficiency and the protection against leakage of contents afforded by the standard types of corresponding capacity described in the specifications published herein, provided they are labeled or marked to show compliance with this requirement.

(d) Tank cars used for the shipment of dangerous articles other than explosives must comply with Master Car Builders' specifications, and a tank car that leaks or one that has any defect which would make leakage during transit probable or that has not been tested and stenciled in compliance with Master Car Builders' specifications must not be used for the shipment of any inflammable liquid.

(e) The tanks and their fittings must be examined by the shipper to see that they are in proper condition for loading. Tanks must be examined for evidence of previous leaks; safety and outlet valves, dome covers, and outlet-valve caps must be in proper condition before loading; tanks must be loaded with outlet valve caps off; after loading, tanks must not show any dropping of liquid contents at the seams or rivets, and should such dropping appear cars must be properly repaired by calking; outlet valves must not permit more than a dropping of the liquid with valve caps off, otherwise valve must be reground and repaired. Dome covers and valve caps provided with suitable gaskets must be properly screwed in place before cars are tendered to the carrier.

(f) Loaded tank cars tendered for shipment must be inspected by the carrier to see that they are not leaking; that the air and hand brakes, journal boxes, trucks, and safety appliances are in proper condition for service; and that the car has been tested within limits prescribed by Master Car Builders' specifications.

(g) Tests of all tank cars and their safety valves, as made in compliance with Master Car Builders' specifications, must be certified by the party making the tests to the owner of the tank car and to the chief inspector, Bureau of Explosives, and this certification must show the initials and number of the tank car, the service for which it is suitable, the date of test, place of test, and by whom made.

#### *Inflammable Liquids—Red Label*

1824. (a) All inflammable liquids must be shipped in packages complying with specifications that apply, as follows:

(b) In tightly closed metal cans of not exceeding 10 gal-

lons capacity, packed in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11.

(c) In well-stoppered glass or earthenware vessels of not exceeding 1 gallon capacity, cushioned in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11, or in a well-stoppered glass or earthenware vessel of not exceeding 5 gallons capacity, well cushioned in a wooden box and not more than one such vessel in the box. The completed package must comply with swing and drop tests prescribed for boxed carboys by Specification No. 1.

(d) In well-stoppered glass, earthenware, or metal vessels of not exceeding 1 pint capacity when flash point is 20° F., or lower, and 1 quart capacity when flash point is above 20° F., cushioned in fiber board or corrugated strawboard containers complying with Specification No. 24.

(e) In wooden kits of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2, or cushioned in wooden barrels or kegs complying with Specification No. 11.

(f) In metal-jacketed cans of not exceeding 10 gallons capacity, complying with Specification No. 23.

(g) In well-stoppered carboys of not exceeding 13 gallons capacity, cushioned in wooden boxes complying with Specification No. 1.

(h) In wooden barrels or kegs complying with Specification No. 10 when the flash point of the liquid is not lower than 20° F., or in wooden barrels or kegs complying with Specification No. 9 when the flash point is lower than 20° F., unless otherwise provided in the tariffs under which shipment moves.

(i) In metal barrels or drums complying with Specification No. 5.

(j) In tank cars complying with Master Car Builders' specifications provided the vapor tension of the inflammable liquid corresponding to a temperature of 100° F. does not exceed 10 pounds per square inch. A tank car must not be used for shipping inflammable liquids with flash point lower than 20° F., unless it has been tested with cold-water pressure of 60 pounds per square inch and stenciled as required by Master Car Builders' specifications, and is equipped with safety valves set to operate at 25 pounds per square inch, and with mechanical arrangement for closing dome cover as specified in paragraph 1824 (k).

(k) Liquid condensates from natural gas or from casing head gas of oil wells, made either by the compression or absorption process, alone or blended with other petroleum products, must be described as Liquefied Petroleum Gas when the vapor pressure<sup>1</sup> at 100° F. (90° F. November 1 to March 1) exceeds 10 pounds per square inch.

When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding 10 pounds per square inch, it must be described and shipped as Gasoline, Casing head Gasoline, or Casing head Naphtha.

Liquefied petroleum gas of vapor pressure exceeding 10 pounds per square inch and not exceeding 15 pounds per square inch, from April 1 to October 1 and 20 pounds per square inch from October 1 to April 1, must be shipped in metal drums or barrels which comply with Shipping Container Specification No. 5; or in special insulated tank cars approved for this service by the Master Car Builders' Association.

Liquefied petroleum gas of vapor pressure exceeding 15 or 20 pounds per square inch as provided herein, and not exceeding 25 pounds per square inch, must be shipped only in metal drums or barrels which comply with Shipping Container Specification No. 5.

Liquefied petroleum gas of vapor pressure exceeding 25 pounds per square inch must be shipped in cylinders as prescribed for compressed gases (see pars. 1861 to 1863, inclusive).

When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding 10 pounds per square inch it must be described as Gasoline or Casing-head Gasoline or Casing-head Naphtha and must be shipped in metal drums or barrels complying with Specification No. 5; or in ordinary tank cars, 60 pounds test class equipped with mechanical arrangement for closing of dome covers as specified in Master Car Builders' specifications for tank cars.

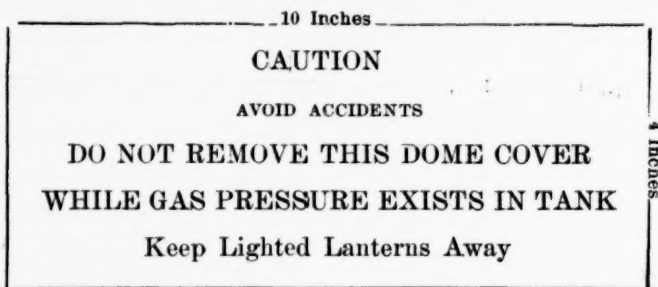
Every tank car containing liquid condensates, either blended or unblended, including liquefied petroleum gas, as defined herein, must have safety valves set to operate at 25 pounds per square inch with a tolerance of 3 pounds above or below, and the mechanical arrangements for closing the dome covers of such cars must either be such as to make it practically impossible to remove the dome cover while the interior

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(1) In measuring the vapor pressure the container may be vented momentarily at a temperature of 70° F.

of the car is subjected to pressure; or suitable vents that will be opened automatically by starting the operation of removing the dome cover must be provided:

The shipper must attach securely and conspicuously to the dome and dome cover three special white dome placards measuring 4x10 inches, bearing the following wording:



One placard must be attached to each side of the dome and one placard must be attached to the dome cover. The presence of these special dome placards must be noted on the shipping order by the shipper and by the carrier on the billing accompanying the car. Placards must conform to samples furnished by the Chief Inspector of the Bureau of Explosives.

(1) Carbon bisulphide in interior packages of capacity greater than one-half gallon must be shipped in metal cans of not less than 28 gauge, boxed, complying with Specification No. 2; or in metal barrels or drums complying with Specification No. 5, such barrels or drums not to exceed 55 gallons capacity. Carbon bisulphide may also be shipped in tank cars complying with paragraph 1824 (j).

1825. (a) Packages containing inflammable liquids must not be entirely filled. Sufficient interior space must be left vacant to prevent leakage or distortion of containers, due to increase of temperature during transit. In all such packages this vacant space must not be less than 2 per cent of the total capacity of the container. In tank cars the vacant space must not be less than 2 per cent<sup>1</sup> of the total capacity of the tank, i. e., the shell and dome capacity, combined. If the dome of tank cars does not provide this 2 per cent, sufficient vacant space must be left in the shell of the tank to make up the difference.

(b) In packages containing alcohol, cologne spirits, high wines, or other distilled spirits of 150 proof or over the vacant interior space or allowance for wantage or ullage must be the

maximum permitted by the United States Internal Revenue Regulations.

1826. Interior packages containing 1 quart or more of an inflammable liquid must be packed with their filling holes up and the top of the outside package must be plainly marked "THIS SIDE UP."

1827. Wooden-jacketed cans and wooden kits must not be used for the shipment of inflammable liquids, except as inside containers as provided by Specification No. 2 or 11.

(1) An outage of 2 per cent is frequently insufficient for light petroleum products, owing to the fact that they expand more than heavier petroleum products when the temperature increases, and this rate of expansion varies with the specific gravity of the material. It is recommended that when tank cars are loaded with gasoline, casing-head gasoline or casing-head naphtha (see Par. 1824 (k)) the outage in tank shall not be less than the following:

Temperature of product when loaded.	Minimum outage required when gravity is—		
	50-60° B. Per cent.	60-70° B. Per cent.	70-80° B. Per cent.
0- 60° F.....	3.2	3.5	4.1
61- 70° F.....	2.5	2.8	3.3
71- 80° F.....	2.0	2.1	2.4
81-100° F.....	2.0	2.0	2.0

### Government's Exhibit 45.

Only three supplements to this Classification will be in effect at any time.

P. S. C.-Mo. No. 39, of F. A. Leland, Agent (Cancels P. S. C.-Mo. No. 14) C. R. C. No. 492 of Eugene Morris, Agent (Cancels C. R. C. No. 386) Ohio No. 537 of Eugene Morris, Agent (Cancels R. C. O. No. 372). *I. C. C. No. 1137.* Cancels I. C. C. No. 1026 F. A. Leland, Agent. I. C. C. No. 588 Cancels I. C. C. No. 442 Eugene Morris, Agent.

### SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES--CIRCULAR NO. 1-G

(Cancels Southwestern Lines' Classifications Exceptions and Rules-Circular No. 1-F)

(For Individual Lines' Tariff Numbers, Current and Canceled, See Page 2 and 3)

Containing Exceptions to Western Classification No. 53 (R. S. Fyfe's I. C. C. No. 11, P. S. C.-Mo. No. 2) or re-issues



thereof) and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex., (see item No. 18, or re-issues thereof) and moving under tariffs which are specifically made subject hereto.

Note.—Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied."

The ratings named in this Classification are subject to the conditions of the carriers' bills of lading, and (unless otherwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 53 (R. C. Fyfe's I. C. C. No. 11, P. S. C.-Mo. No. 2), or re-issue thereof.

This Classification, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued May 2, 1916. *Effective June 15, 1916* (except as noted in Items Nos. 91 and 92).

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24017.

(Stamped:) Received; Interstate Commerce Commission; 28536; May 3 1916; Division of Tariffs. Cancelled by I. C. C. No. 1244; Effective 10-19-1918.

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Pages 4, 10, 12 and 18.

## PARTICIPATING CARRIERS.

*	NAMES OF CARRIERS.	Under powers of Attorney to F. A. Leland F. X. 1 No.	*
*	* The Atchison, Topeka and Santa Fe Ry. Co.	33	*
*	* Gulf, Colorado & Santa Fe Ry. Co.	39	*
*	* The Kansas City Southern Ry. Co.	24	*
*	* St. Louis and San Francisco R. R.	100	*
*	* James W. Lusk, W. C. Nixon, W. B. Biddle, Receivers.		*
*	* Texas and New Orleans R. R. Co.	12	*
*	* Houston & Texas Central R. R. Co.	16	*
*	* Texarkana & Ft. Smith Ry. Co.	20	*
*	* Midland Valley R. R. Co.	18	*

*Supplement No. 4.*

To. P. S. C.—Mo. No. 39 of F. A. Leland, Agent. C. R. C. No. 492 of Eugene Morris, Agent. Ohio No. 537 of Eugene Morris, Agent. I. C. C. No. 1137 of F. A. Leland, Agent. I. C. C. No. 588 of Eugene Morris, Agent.

Cancels Supplement No. 3. Supplement No. 4 contains all changes from the original Classification that are effective November 1, 1916.

### SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES—CIRCULAR No. 1-G.

(See page 2 for individual lines' tariff numbers.)

Containing Exceptions to Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.—Mo. No. 3), or re-issues thereof, and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex. (See Item No. 18, or reissues thereof) and moving under tariffs which are specifically made subject hereto.

Note. Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in

carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section ... of this tariff make a lower charge on any shipment than the rates in section ... of this tariff, the rates in section ... will be applied."

The ratings named in this Classification, as amended, are subject to the conditions of the carriers' bills of lading, and (unless otherwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C. Mo. No. 3), or reissues thereof.

This Classification, as amended, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued September 11, 1916. *Effective October 23, 1916.* (Except as noted on page 4 where reference is made to (106); in Item 30-A, and in other Individual Items.)

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24391.

(Stamped) Received Interstate Commerce Commission, 52796, September 13, 1916. Division of Tariffs. Public File.

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Page 14.

#### RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
* * *	* * *	* * *
Minimum weights on commodities in tank cars.	298 A 298	(1) The weights and charges on shipments in tank cars (***) shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-J, E. B. Boyd's I. C. C. No. A-623, *** or re-issues thereof), at actual or estimated weights provided in current Western Classification—except as provided in Sections (2) *** unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.

(2) When shipments of inflammable liquids, subject to Section 1825, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car

\* \* \* \* \*

### *Supplement No. 5.*

To P. S. C.—Mo. No. 39 of F. A. Leland, Agent; C. R. C. No. 492 of Eugene Morris, Agent; Ohio No. 537 of Eugene Morris, Agent; I. C. C. No. 1137 of F. A. Leland, Agent; I. C. C. No. 588 of Eugene Morris, Agent.

Cancels Supplement No. 4. Supplement No. 5 contains all changes from the original Classification that are effective November 23, 1916.

### **SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES--CIRCULAR NO. 1-G**

(See page 2 for individual lines' tariff numbers)

Containing Exceptions to Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.—Mo. No. 3), or re-issues thereof, and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex. (see item No. 18, or re-issues thereof), and moving under tariffs which are specifically made subject hereto.

Note.—Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied."

The ratings named in this Classification are subject to the conditions of the carriers' bills of lading, and (unless oth-

erwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof.

This Classification, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued October 5, 1916. *Effective November 16, 1916* (except as noted on pages 3, 4 and 5 where reference is made to (109); and in Individual Items).

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24473.

(Stamped:) Received; Interstate Commerce Commission; 57370; Oct 5 1916; Division of Tariffs.

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# RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
Minimum weights on commodities in tank cars.	298-A cancels 298	(1) The weights and charges on shipments in tank cars (***) shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-J, E. B. Boyd's I. C. C. No. A 623, *** or re-issues thereof), at actual or estimated weights provided in current Western Classification—except as provided in Sections (2) *** unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.  (2) When shipments of inflammable liquids, subject to Section 1325, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

Reissue; effective October 23, 1916, in Supplement No. 4.

*Supplement No. 7.*

To P. S. C.—Mo. No. 39 of F. A. Leland, Agent; C. R. C. No. 492 of Eugene Morris, Agent; Ohio No. 537 of Eugene Morris, Agent; *I. C. C. No. 1137 of F. A. Leland, Agent*; I. C. C. No. 588 of Eugene Morris, Agent.

Cancels Supplement No. 5. Supplement No. 7 contains all changes from the original Classification that are effective December 16, 1916. Supplement No. 6 suspends portions of Supplement No. 4.

**SOUTHWESTERN LINES' CLASSIFICATION  
EXCEPTIONS AND RULES--CIRCULAR NO. 1-G**

(See page 2 for individual lines' tariff numbers)

Containing Exceptions to Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof, and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex. (see item No. 18, or re-issues thereof), and moving under tariffs which are specifically made subject hereto.

Note.—Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied."

The ratings named in this Classification are subject to the conditions of the carriers' bills of lading, and (unless otherwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof.

This Classification, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued October 24, 1916. *Effective December 5, 1916* (except as noted in item 236-B, and in other individual items).

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24615.

(Stamped:) Received; Interstate Commerce Commission; 60419; Oct 25 1916; Division of Tariffs.

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# RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
* * * * *		
Minimum weights on commodities in tank cars.	298-A cancels 298	(1) The weights and charges on shipments in tank cars (***) shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-J, E. B. Boyd's I. C. C. No. A 623, *** or re-issues thereof), at actual or estimated weights provided in current Western Classification—except as provided in Sections (2) *** unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.  (2) When shipments of inflammable liquids, subject to Section 1325, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

\* \* \* \* \*

Reissue; effective October 23, 1916, in Supplement No. 4.

## Supplement No. 8.

To P. S. C.—Mo. No. 39 of F. A. Leland, Agent; C. R. C. No. 492 of Eugene Morris, Agent; Ohio No. 537 of Eugene Morris, Agent; *I. C. C. No. 1137 of F. A. Leland, Agent*; I. C. C. No. 588 of Eugene Morris, Agent.

Supplements Nos. 7 and 8 contain all changes from the original Classification that are effective on the date hereof. Supplement No. 6 suspends portions of Supplement No. 4.



**SOUTHWESTERN LINES' CLASSIFICATION  
EXCEPTIONS AND RULES--CIRCULAR NO. 1-G**

(See page 2 for individual lines' tariff numbers)

Containing Exceptions to Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof, and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex. (see item No. 18, or re-issues), and moving under tariffs which are specifically made subject hereto.

Note.—Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied."

The ratings named in this Classification are subject to the conditions of the carriers' bills of lading, and (unless otherwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof.

This Classification, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued November 23, 1916. *Effective January 4, 1917.*

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24675.

(Stamped:) Received; Interstate Commerce Commission; 65930; Nov 25 1916; Division of Tariffs.

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Page 3.

## PARTICIPATING CARRIERS.

• • • • •									
• NAMES OF CARRIERS.								Under powers of Attorney to F. A. Leland •	
								F. X. 1 No.	
•	•	•	•	•	•	•	•	•	•
•	St. Louis-San	Francisco	Ry.....					100	•
•	•	•	•	•	•	•	•	•	•

*Supplement No. 9.*

To P. S. C.—Mo. No. 39 of F. A. Leland, Agent; C. R. C. No. 492 of Eugene Morris, Agent; Ohio No. 537 of Eugene Morris, Agent; *I. C. C. No. 1137 of F. A. Leland, Agent*; I. C. C. No. 588 of Eugene Morris, Agent.

Cancels Supplement No. 8. Supplements Nos. 7 and 9 contain all changes from the original classification that are effective on the date hereof. Supplement No. 6 suspends portions of Supplement No. 4.

**SOUTHWESTERN LINES' CLASSIFICATION  
EXCEPTIONS AND RULES—CIRCULAR NO. 1-G**

(See page 2 for individual lines' tariff numbers)

Containing Exceptions to Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.—Mo. No. 3), or re-issues thereof, and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex. (see item No. 18, or re-issues), and moving under tariffs which are specifically made subject hereto.

Note.—Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied."

The ratings named in this Classification are subject to the conditions of the carriers' bills of lading, and (unless oth-

erwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof.

This Classification, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued December 23, 1916. *Effective February 3, 1917* (except as noted on page 4 where reference is made to (112); in item No. 948; and in other individual items).

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24779.

(Stamped:) Received; Interstate Commerce Commission; 3474; Dec 20 1916; Division of Tariffs.

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Page 4.

#### PARTICIPATING CARRIERS.

\* \* \* \* \*

* NAMES OF CARRIERS.	Under powers of Attorney to F. A. Leland *	
	F. X. 1 No.	
* St. Louis-San Francisco Ry.....	137	*
* * * * *		*

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#### RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
Minimum weights on commodities in tank cars.	298-B * cancels 298-A	(1) The weights and charges on shipments in tank cars (***) shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. No. A-722, * * * or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections (2) * * * unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.  (2) When shipments of inflammable liquids subject to Section 1825, Rule 44 of current Western Classification, are loaded in tank cars, the don-es of

which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

\* \* \* \* \*

### Supplement No. 12.

To P. S. C.—Mo. No. 39 of F. A. Leland, Agent; C. R. C. No. 492 of Eugene Morris, Agent; Ohio No. 537 of Eugene Morris, Agent; I. C. C. No. 1137 of F. A. Leland, Agent; I. C. C. No. 588 of Eugene Morris, Agent.

Cancels Supplement No. 9. Supplements Nos. 10 and 12 contain all changes from the original Classification that are effective April 16, 1917. Supplement No. 11 suspends portions of Supplement No. 4.

### SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES—CIRCULAR NO. 1-G

(See page 2 for individual lines' tariff numbers)

Containing Exceptions to Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.—Mo. No. 3), or re-issues thereof, and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex. (see item No. 18, or re-issues), and moving under tariffs which are specifically made subject hereto.

Note.—Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied."

The ratings named in this Classification are subject to the conditions of the carriers' bills of lading, and (unless otherwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.—Mo. No. 3), or re-issues thereof.

This Classification, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued February 23, 1917. *Effective April 5, 1917* (except as noted on page 3 where reference is made to (116); in item 400-C; and in other individual items.)

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 24992.

(Stamped:) Received; Interstate Commerce Commission; 13555; Feb 21 1917; Division of Tariffs.

Page 4.

#### PAR TICIPATING CARRIERS.

* NAMES OF CARRIERS.	Under powers of Attorney to F. A. Leland *	
	F. X. 1 No.	
* St. Louis-San Francisco Ry.....	137	*
Reissue; effective February 3, 1917, in Supplement No. 9.		

Page 9.

#### RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
Minimum weights on commodities in tank cars.	298-B cancels 298-A	(1) The weights and charges on shipments in tank cars (***) shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K. E. B. Boyd's I. C. C. No. A-722, * * * or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections (2) * * * unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.
Reissue; effective February 3, 1917, in Supplement No. 9.		(2) When shipments of inflammable liquids subject to Section 1325, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

*Supplement No. 16.*

To P. S. C.—Mo. No. 39 of F. A. Leland, Agent; C. R. C. No. 492 of Eugene Morris, Agent; Ohio No. 537 of Eugene Morris, Agent; I. C. C. No. 1137 of F. A. Leland, Agent; I. C. C. No. 588 of Eugene Morris, Agent.

(Cancels Supplement No. 12.) Supplements Nos. 15 and 16 contain all changes from the original Classification that are effective June 8, 1917. Supplement No. 11 suspends portions of Supplement No. 4. Supplement No. 14 suspends Supplement No. 13.

**SOUTHWESTERN LINES' CLASSIFICATION  
EXCEPTIONS AND RULES--CIRCULAR NO. 1-G**

(See page 2 for individual lines' tariff numbers)

Containing Exceptions to Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof, and Rules and Conditions governing traffic originating at or destined to points in Louisiana and Texas, also Texarkana, Ark.-Tex. (see item No. 18, or re-issues), and moving under tariffs which are specifically made subject hereto.

Note.—Whenever a carload or a less-than-carload commodity rate is established, it removes the application of the class rate to or from the same points on that commodity in carload quantities or less-than-carload quantities (as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule: "If the rates in section — of this tariff make a lower charge on any shipment than the rates in section — of this tariff, the rates in section — will be applied."

The ratings named in this Classification are subject to the conditions of the carriers' bills of lading, and (unless otherwise provided to the contrary) to the rules, conditions and requirements of Western Classification No. 54 (R. C. Fyfe's I. C. C. No. 12, P. S. C.-Mo. No. 3), or re-issues thereof.

This Classification, contains rates that are higher for shorter distances than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein.

Exception: Will not apply on traffic moving wholly within the State of Missouri.

Issued April 21, 1917. *Effective May 31, 1917* (except as noted on pages 3, 4 and 5 where reference is made to (119); in items 377-F, 949-D; and in other individual items).

Issued by Eugene Morris, Agent, Chicago, Ill.; F. A. Leland, Agent, St. Louis, Mo.

Authority No. 25196.

(Stamped:) Received; Interstate Commerce Commission; 24868; Apr 21 1917; Division of Tariffs.

\* \* \* \* \*

Page 4.

#### PARTICIPATING CARRIERS.

\* \* \* \* \*

* NAMES OF CARRIERS.	* Under powers of Attorney to F. A. Leland *
	F. X. 1 No.

* St. Louis-San Francisco Ry.....	* 137 *
* Reissue; effective February 3 1917, in Supplement No. 9.	

Page 10.

#### RULES AND CONDITIONS.

SUBJECT	Item No.	RULES
Minimum weights on commodities in tank cars.	298-B cancels 298-A	(1) The weights and charges on shipments in tank cars (***) shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-K, E. B. Boyd's I. C. C. No. A-722, * * * or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections (2) * * * unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.
Reissue; effective February 2, 1917, in Supplement No. 9.		(2) When shipments of inflammable liquids subject to Section 1825, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.

\* \* \* \* \*



**Government's Exhibit 46.**

I. C. C. No. 1244. Cancels I. C. C. No. 1137, F. A. Leland, Agent.

UNITED STATES RAILROAD ADMINISTRATION.  
W. G. McADOO, DIRECTOR GENERAL OF RAILROADS.  
SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES CIRCULAR No. 1-H.

(Cancels Southwestern Lines' Classification Exceptions and Rules Circular No. 1-G.)

containing

Exceptions to Western Classification No. 55.

(R. C. Fyfe's I. C. C. No. 13 \* \* \* or reissues.)

and

Rules and Conditions governing traffic originating at or destined to points in

LOUISIANA AND TEXAS, ALSO TEXARKANA,  
ARK.-TEX.

(See item No. 42 or reissues.)

and moving under tariffs which are specifically made subject hereto.

\* \* \* \* \*

Issued September 7, 1918.

Effective October 19, 1918.

\* \* \* \* \*

Issued by F. A. Leland, Agent, St. Louis, Mo.

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**Government's Exhibit 47.**

Only three Supplements to this Tariff will be in effect at any time.

I. C. C. No. 999. Cancels I. C. C. No. 889.

SOUTHWESTERN LINES TARIFF NO. 26-S

Cancels Southwestern Lines Tariff No. 26-R. For Individual Lines' Tariff Numbers, Current and Cancelled, see page 4.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 73 to 79, inclusive, and points in Texas, also Texarkana, Tex.-Ark., named on pages 44 to 62, inclusive.

Governed, except as otherwise provided herein, by WESTERN CLASSIFICATION No. 51 (F. J. Hoffman's I. C. C. No. 9) or reissues thereof; and SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES CIRCULAR No. 1-E (F. A. Leland's I. C. C. No. 931), or reissues thereof.

Special Notice.—The rates named in this Tariff are subject to the conditions of the Carriers' Bills of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

This Tariff contains rates that are higher for shorter than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by Authority of Interstate Commerce Commission Order F. S. No. 108 of July 12, 1911, F. S. No. 317 of October 10, 1911, Order F. S. No. 417 of December 12, 1911, Order F. S. No. 859 of March 16, 1912, and F. S. O. No. 1258 of June 1, 1912.

Issued June 20, 1913. *Effective August 1, 1913* (C. F. 23608) (C. F. 34901) except as noted on pages 51 and 66 where reference is made to (18); and in item 1656.

In view of the relinquishment of groups and the establishment of group rates in lieu of rates at individual points and other extraordinary conditions which obtain in this instance, changes in rates are not indicated in this tariff under special permission of the Interstate Commerce Commission No. 24971 of June 19, 1913.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 20350.

(Stamped:) Received; Interstate Commerce Commission; 39946; Jun 28 1913; Division of Tariffs. Cancelled by I. C. C. No. 1048; Effective July 24, 1914.

\* \* \* \* \*

# 1178 GULF REFINING COMPANY, A CORPORATION, vs.

Pages 6 and 7.

## PARTICIPATING CARRIERS.

Railway Abbreviations	NAMES OF CARRIERS ***.	Under Powers of Attorney to F.A. Leland Form F X 1 No.	*
K. C. S.....	The Kansas City Southern Ry. Co.....	24	..
St. L. & S. F....	St. Louis & San Francisco R. R. Co.....	65	..
	Thos. H. West, B. L. Winchell, Receivers.		
St. L. S. F. & T...	St. Louis, San Francisco & Texas Ry. Co..	12	..
T. & N.O.....	Texas & New Orleans R. R. Co.....	12	..
H. & T. C. ....	Houston & Texas Central R. R. Co.....	16	..
T. & Ft. S. ....	Texarkana & Ft. Smith Ry. Co.....	20	..

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## LIST OF OKLAHOMA POINTS FROM AND TO WHICH SPECIFIC RATES APPLY.

For Geographical list of Oklahoma points from and to which rates apply, showing Railroad Location and Rate Bases applicable, see pages 73 to 79, inclusive.

Index No. (See pages 73 to 79 inclusive)	STATIONS	Item Nos. ***.
10100	Kiefer.....	*** 1536 *** 2514 ***

Page 59.

## GEOGRAPHICAL LIST OF TEXAS POINTS FROM AND TO WHICH RATES APPLY.—SHOWING GROUP BASES APPLICABLE.

Index Nos.	STATIONS ON	Group Bases
	T. & N. O. R. R.	
5836	West Port Arthur.....	8
5838	Port Arthur.....	8

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T. & FT. S. RY.									
7956	Port	Arthur	.....	.....	.....	.....	.....	.....	8

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GEOGRAPHICAL LIST OF OKLAHOMA POINTS FROM AND TO WHICH  
RATES APPLY.

ST. L. & S. F. R. R.									
Index Nos.	STATIONS ON							Group Bases	
10100	Kiefer	.....	.....	.....	.....	.....	.....	.....	.....

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COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item No.	COMMODITIES	FROM	TO Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.
	Carloads, Unless Otherwise Specified	*	*
1536	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-E (F. A. Leland's I. C. C. No. 931), or reissues thereof.....</p> <p>Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-E (F. A. Leland's I. C. C. No. 931) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .</p>	<p>Following points in Oklahoma</p> <p>Kiefer</p>	* 37 *

*Supplement No. 10 to I. C. C. No. 999.* Cancels Supplement No. 9. Supplement No. 10 contains all changes from the original tariff that are effective on the date hereof.

**SOUTHWESTERN LINES TARIFF NO. 26-S**

For Individual Lines' Tariff Numbers, see page 2.

*Supplement No. 10.*

Cancels Supplement No. 9. Supplement No. 10 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 73 to 79, inclusive, of tariff and page 10 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 44 to 62, inclusive, of tariff, and pages 8 and 9 herein.

Governed, except as otherwise provided herein, by WESTERN CLASSIFICATION No. 52 (F. J. Hoffman's I. C. C. No. 10), or reissues thereof; and SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES CIRCULAR No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

Special Notice.—The rates named in this Tariff are subject to the conditions of the Carriers' Bills of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

This Tariff contains rates that are higher for shorter than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by Authority of Interstate Commerce Commission Order F. S. No. 108 of July 12, 1911, F. S. No. 317 of October 10, 1911, Order F. S. No. 417 of

December 12, 1911, Order F. S. No. 859 of March 16, 1912, F. S. No. 1258 of June 1, 1912, and F. S. No. 3033, of July 22, 1913.

Issued December 12th, 1913. *Effective January 24th, 1914*; except as noted on pages 9 and 10, where reference is made to (35); on page 24; in items 1422c and 2511a; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 20939.

(Stamped:) Received; Interstate Commerce Commission; 2625; Dec 17 1913; Division of Tariffs.

Page 32.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*

Item No.	COMMODITIES Carloads, * * *	FROM *	TO Texas Groups Nos. 6 to 13 Inclusive Rates in Cents per 100 lbs. *
1536a cancels 1536	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,090 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof. . . . .		Following points in Oklahoma * Kiefer *
	Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026) or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .		37 *

*Supplement No. 12 to I. C. C. No. 999.* Cancels Supplement No. 11. Supplement No. 12 contains all changes from the original tariff that are effective on the date hereof.

**SOUTHWESTERN LINES TARIFF NO. 26-S**

For Individual Lines' Tariff Numbers, see page 2.

*Supplement No. 12.*

Cancels Supplement No. 11. Supplement No. 12 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 73 to 79, inclusive, of tariff and page 11 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 44 to 62, inclusive, of tariff, and pages 9 and 10 herein.

Governed, except as otherwise provided herein, by WESTERN CLASSIFICATION No. 52 (F. J. Hoffman's I. C. C. No. 10), or reissues thereof; and SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES CIRCULAR No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

Special Notice.—The rates named in this Tariff are subject to the conditions of the Carriers' Bills of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

This Tariff contains rates that are higher for shorter than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by Authority of Interstate Commerce Commission Order F. S. No. 108 of July 12, 1911, F. S. No. 317 of October 10, 1911, Order F. S. No. 417 of



December 12, 1911, Order F. S. No. 859 of March 16, 1912, F. S. No. 1258 of June 1, 1912, and F. S. No. 3033, of July 22, 1913.

Issued February 18th, 1914. *Effective March 25th, 1914*; except as noted on pages 2 and 9 where reference is made to (39); on pages 26 to 30; on pages 9, 11, 21 and 22 and in items 1730b, 1776c, 1920a and 2508c where reference is made to (40); in item 2546; and in other individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 21151.

(Stamped:) Received; Interstate Commerce Commission; 13025; Feb 19 1914; Division of Tariffs.

\* \* \* \* \*

Page 34.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *
<p>Reissue; effective January 24, 1914, in Supplement No. 10.</p>			
1536a	<p>OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298, of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....</p>	Following	
cans		points in	
1536		Oklahoma	
		"	
		Kiefer	37 *

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. ....

\* \* \* \* \*

COMMODITY RATES.				
Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates in Cents per 100 lbs.
Effective April 3rd, 1914.				
2546	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues.....	Kiefer, *	Following points in Texas; * Port Arthur	33

*Supplement No. 13 to I. C. C. No. 999.* Cancels Supplement No. 12. Supplement No. 13 contains all changes from the original tariff that are effective on the date hereof.

**SOUTHWESTERN LINES TARIFF NO. 26-S**  
For Individual Lines' Tariff Numbers, see page 2.

*Supplement No. 13.*

Cancels Supplement No. 12. Supplement No. 13 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 73 to 79, inclusive, of tariff and page 11 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 44 to 62, inclusive, of tariff, and pages 9 and 10 herein.

Governed, except as otherwise provided herein, by WESTERN CLASSIFICATION No. 52 (F. J. Hoffman's I. C. C. No. 10), or reissues thereof; and SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES CIRCULAR No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

**Special Notice.**—The rates named in this Tariff are subject to the conditions of the Carriers' Bills of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are hereby made subject to the provisions of Rule 77.

sues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

This Tariff contains rates that are higher for shorter than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by Authority of Interstate Commerce Commission Order F. S. No. 108 of July 12, 1911, F. S. No. 317 of October 10, 1911, Order F. S. No. 417 of December 12, 1911, Order F. S. No. 859 of March 16, 1912, F. S. No. 1258 of June 1, 1912, and F. S. No. 3033, of July 22, 1913.

Issued February 28th, 1914. *Effective April 4th, 1914*; except as noted on page 30 where reference is made to (43); and in individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 21217.

(Stamped:) Received; Interstate Commerce Commission; 14912; Feb 28 1914; Division of Tariffs.

\* \* \* \* \*

Page 34.

COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS  
LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs.

Reissue; effective January 24, 1914,  
in Supplement No. 10.

1536a OILS: Petroleum Oil and its Products, \* \* \* listed under head of "Petroleum and Petroleum Products," and  
canceled rated Fifth Class in current Western  
1536 Classification; \* \* \*; in straight or  
pounds, except that freight charges on  
shipments transported in tank cars will  
be determined in the manner prescribed  
in Item No. 298, of Southwestern Lines'  
Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....

Following  
points in  
Oklahoma  
"

Kelfer,

37 \*

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

Page 54.

## COMMODITY RATES.

Item No.	COMMODITIES Carloads, * * *	FROM	TO	Rates cents per 100 lbs.
Reissue; effective April 3rd, 1914, in Supplement No. 12.				
2546	Gasoline in tank cars, minimum weight as provided in Item 293 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues. . . . .	* Kiefer *	Following points in Texas: *  Port Arthur	33

*Supplement No. 14 to I. C. C. No. 999.* Cancels Supplement No. 13. Supplement No. 14 contains all changes from the original tariff that are effective on the date hereof.

## SOUTHWESTERN LINES TARIFF NO. 26-S

For Individual Lines' Tariff Numbers, see page 2.

*Supplement No. 14.*

Cancels Supplement No. 13. Supplement No. 14 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on classes and commodities between points in Oklahoma, named on pages 73 to 79, inclusive, of tariff and page 11 herein, and points in Texas, also Texarkana, Tex.-Ark., named on pages 44 to 62, inclusive, of tariff, and pages 9 and 10 herein.

Governed, except as otherwise provided herein, by WESTERN CLASSIFICATION No. 52 (F. J. Hoffman's I. C. C. No. 10), or reissues thereof; and SOUTHWESTERN LINES' CLASSIFICATION EXCEPTIONS AND RULES CIRCULAR.

LAR No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.

Special Notice.—The rates named in this Tariff are subject to the conditions of the Carriers' Bills of Lading, and apply from all points specified to all points specified via all lines parties, unless specifically provided to the contrary in Items 78 to 1380, inclusive, or reissues, or in other individual items.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates throughout this Tariff that are made subject to Items Nos. 48, 54, 60 and 66, or reissues thereof, are not made applicable from and to all intermediate points. Upon reasonable request therefor rates which will not exceed those published in such items from or to (as the case may be) the next more distant station will (under authority granted by the Interstate Commerce Commission) be established in the manner therein indicated by the carriers parties to this Tariff, upon one day's notice to the Commission and the public.

This Tariff contains rates that are higher for shorter than for longer distances over the same route, such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by Authority of Interstate Commerce Commission Order F. S. No. 108 of July 12, 1911, F. S. No. 317 of October 10, 1911, Order F. S. No. 417 of December 12, 1911, Order F. S. No. 859 of March 16, 1912, F. S. No. 1258 of June 1, 1912, and F. S. No. 3033, of July 22, 1913.

Issued April 11th, 1914. *Effective May 20th, 1914*; except as noted on page 23 where reference is made to (44); on page 26 where reference is made to (45); and in individual items.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 21377.

(Stamped:) Received; Interstate Commerce Commission; 28556; Apr 14 1914; Division of Tariffs.

• • • • •

# 1190 GULF REFINING COMPANY, A CORPORATION, v3.

Page 34.

## COMMODITY RATES FROM POINTS SPECIFIED TO TEXAS POINTS LOCATED IN GROUPS 1 TO 13, INCLUSIVE, \* \* \*.

Item	COMMODITIES	FROM	TO
No.	Carloads, * * *	*	Texas Groups Nos. 6 to 13 inclusive Rates in Cents per 100 lbs. *

Reissue effective January 24, 1914,  
in Supplement No. 10.

1536a cancels 1536	OILS: Petroleum Oil and its Products, * * * listed under head of "Petroleum and Petroleum Products," and rated Fifth Class in current Western Classification; * * *; in straight or mixed carloads; minimum weight 26,000 pounds, except that freight charges on shipments transported in tank cars will be determined in the manner prescribed in Item No. 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof.....	Following points in Oklahoma " "	
		Kiefer	37 *

Unless specifically provided to the contrary in this tariff or in Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues thereof, shipments of petroleum oil and its products specified in this item will be subject to the rules, conditions and estimated weights provided in current Western Classification. . . . .

Page 54.

## COMMODITY RATES.

Item	COMMODITIES	FROM	TO	Rates in Cents per 100 lbs.
No.	Carloads, * * *			
	Reissue; effective April 3rd, 1914, in Supplement No. 12.			
2546	Gasoline in tank cars, minimum weight as provided in Item 298 of Southwestern Lines' Classification Exceptions and Rules-Circular No. 1-F (F. A. Leland's I. C. C. No. 1026), or reissues.....	Kiefer	Following points in Texas: *	
			Port Arthur	33

**Government's Exhibit 52.**

(Stamp: Received Interstate Commerce Commission  
54130 Sep 20 1916 Division of Tariffs)

I. C. C. No. A-722. Cancels I. C. C. No. A-623.

*Circular No. 6-K* \* \* \* of United States and Canadian Railroads listed on pages 8 to 16 herein, showing Capacities of Tank Cars used in the Transportation of Liquid Freight.

The provisions of this circular apply only on traffic covered by tariffs which make reference thereto, or preceding issues thereof, or in connection with tariffs which refer to publications superseded by preceding issues of this circular, or on traffic covered by tariffs governed by classifications which make reference thereto.

Special Note.—The weights shown herein are only for convenience in billing, and must not be used when in conflict with the provisions of tariffs or classifications of initial carriers at the point of shipment.

Issued September 20, 1916. Effective October 1, 1916 (except as noted in individual items). Issued under special permission of the Interstate Commerce Commission No. 38719 of September 6, 1916.

Issued by E. B. Boyd, Agent, Chicago.

(Stamp: Cancelled by I. C. C. No. A-783, effective 6-8-17.)

*Pages 8 to 16, inclusive.*

**ISSUING CARRIERS.**

This circular is issued by F. B. Boyd, Agent, on behalf of the following lines under authority shown opposite each line:

CARRIERS.	FX1-No. Except as noted.
Atchison, Topeka & Santa Fe R'y Co.....	67
Gulf, Colorado & Santa Fe R'y Co.....	37
Kansas City Southern Ry. Co.....	38
Midland Valley R. R. Co.....	29



St. Louis & San Francisco R. R. Co..... 102  
 (J. W. Lusk, W. C. Nixon, W. B. Biddle,  
 Receivers)

• • • • •  
 Texarkana & Ft. Smith Ry. Co..... 30  
 • • • • •

*Pages 120 to 126, inclusive.*

### GULF REFINING COMPANY.

Cars marked: "G.R.C.X." Used for transporting petroleum and its products.

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
168	7016	1111	8137
309	6662	1113	8139
328	7062	1136	8144
332	7065	1143	8371
422	7044	1153	8130
428	8175	1155	8130
434	8180	1178	8130
437	8137	1206	8089
445	8140	1209	8092
620	8018	1211	8093
621	8005	1220	8096
629	7604	1225	8095
950	8059	1229	8086
961	8056	1232	8095
973	8056	1237	8099
1001	8158	1239	8099
1014	8161	1243	8093
1024	8145	1278	8092
1029	8225	1321	8089
1030	8143	1327	8096
1038	8151	1347	8090
1039	8157	1356	8093
1054	8094	1358	8092
1061	8180	1359	8086
1064	8144	1368	8093
1072	8138	1369	8092
1079	8147	1370	8088
1080	8185	1378	8093
1083	8140	1385	8092
1100	8134	1397	8099

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
1462	8093	1763	8100
1507	12023	2006	8146
1602	8023	2008	8148
1607	8016	2013	8148
1612	8023	2016	8153
1619	8016	2025	8153
1621	8016	2027	8149
1718	8103		

*Supplement No. 37.*

• • • • •

to

• • • • •

I. C. C. No. A-722.

*Supplement No. 37.*

• • • • •

to

Circular No. 6-K.

• • • • •

Issued November 13, 1916. Effective November 24, 1916  
(except as noted in individual items).

Issued under authority of Rule 10, Interstate Commerce  
Commission Tariff Circular No. 18-A.

• • • • •

*Page 3.*

Carriers parties hereto are as shown in circular, except:

**ISSUING CARRIERS.**

Date	In supple- ment No.	Change	Carriers	FX1-No. Except as noted.
1-1-17	37	Change	St. Louis - San Francisco Ry. Co.	102

**Government's Exhibit 53.**

(Stamp: Received Interstate Commerce Commission  
38644 May 29 1917 Division of Tariffs)

I. C. C. No. A-785. Cancels I. C. C. No. A-722.

(Stamp: Cancelled by I. C. C. No. A-826 effective 12-14-1917.)

*Circular No. 6-L* Cancels Circular No. 6-K of United States and Canadian Railroads listed on pages 8 to 16 herein. Showing Capacities of Tank Cars used in the transportation of Liquid Freight.

The provisions of this circular apply only on traffic covered by tariffs which make reference thereto, or preceding issues thereof, or in connection with tariffs which refer to publications superseded by preceding issues of this circular, or on traffic covered by tariffs governed by classifications which make reference thereto.

Issued May 28, 1917. Effective June 8, 1917 (except as noted in individual items).

Issued on one day's notice, under special permission of the Interstate Commerce Commission No. 42116 of May 4, 1917.

Issued by E. B. Boyd, Agent, Chicago.

*Pages 8 to 16, inclusive.*

**ISSUING CARRIERS.**

This circular is issued by E. B. Boyd, Agent, on behalf of the following lines under authority shown opposite each line:

CARRIERS.	FX1-No. Except as noted.
Atchison, Topeka & Santa Fe R'y Co.....	67
Gulf, Colorado & Santa Fe R'y Co.....	37
Kansas City Southern Ry. Co.....	38
Midland Valley R. R. Co.....	29

St. Louis-San Francisco Ry. Co.....	156
Texarkana & Ft. Smith Ry. Co.....	30

*Pages 136 to 142, inclusive.*

## GULF REFINING COMPANY.

Cars marked: "G.R.C.X." Used for transporting petroleum and its products.

Car No.	Full capacity of shell Gallons.	Car No.	Full capacity of shell Gallons.
449	7060	1743	8097
610	8012	1774	8100
924	8059	1786	8100
926	8056	1798	8100
1033	8173	1850	8175
1037	8191	1852	8170
1071	8136	1853	8172
1127	8056	1854	8176
1201	8082	1855	8179
1206	8089	1856	8178
1232	8095	1858	8173
1245	8096	1864	8173
1254	8092	1865	8175
1265	8089	1946	8011
1268	8095	1947	8013
1270	8088	1950	8013
1271	8095	1951	8011
1366	8093	1956	8009
1424	8090	1957	8007
1624	8014	1959	8005
1706	8098	1974	8007
1708	8101	1978	8014
1710	8100	1981	8008
1721	8101	1983	8006
1727	8101	2022	8152
1728	8101	2027	8149
1729	8098		

1196 GULF REFINING COMPANY, A CORPORATION, vs.

(Stamp: Received Interstate Commerce Commission  
62123 Sep 11 1917 Division of Tariffs)

*Supplement No. 39.*

• • • • •  
to

• • • • •  
I. C. C. No. A-785.

*Supplement No. 39.*

• • • • •  
to

• • • • •  
Circular No. 6-L.

Issued September 10, 1917. Effective September 21, 1917  
(except as noted in individual items).

Issued under authority of Rule 10, Interstate Commerce  
Commission Tariff Circular 18-A.

Issued by E. B. Boyd, Agent, Chicago.

• • • • •

*Page 12.*

GLEN-POOL TANK LINE COMPANY.

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Car No.	Full capacity of shell Gallons.
600	8052

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Stamp: Received Interstate Commerce Commission  
70334 Nov 13 1917 Division of Tariffs

*Supplement No. 73.*

• • • • •  
to

• • • • •  
I. C. C. No. A-785.

*Supplement No. 73.*

• • • • •  
to

• • • • •  
Circular No. 6-L.

Issued November 12, 1917. Effective November 23, 1917 (except as noted in individual items).

Issued under authority of Rule 10, Interstate Commerce Commission Tariff Circular No. 18-A.

Issued by E. B. Boyd, Agent, Chicago.

\* \* \* \* \*

Page 6.

### GLEN-POOL TANK LINE COMPANY.

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
625	8050	630	8055

### Government's Exhibit 54.

(Stamp: Received Interstate Commerce Commission 561 Dec 6 1917 Division of Tariffs) Stamp: Cancelled by I. C. C. No. 906 effective Augu 26, 1918. I. C. C. No. A-826. Cancels

\* \* \* \* \*

*Circular No. 6-M*, Cancels Circular No. 6-L \*\*\* of United States and Canadian Railroads listed on pages 8 to 16 herein. Showing Capacities of Tank Cars used in the transportation of Liquid Freight.

The provisions of this circular apply only on traffic covered by tariffs which make reference thereto, or preceding issues thereof, or in connection with tariffs which refer to publications superseded by preceding issues of this circular, or on traffic covered tariffs governed by classifications which make reference thereto.

Issued December 3, 1917. Effective December 14, 1917 (except as noted in individual items).

Issued on one day's notice, under special permission of the Interstate Commerce Commission No. 44411, of November 17, 1917.

Issued by E. B. Boyd, Agent, Chicago.

\* \* \* \* \*

*Pages 8 to 16, inclusive.*

## ISSUING CARRIERS.

This circular is issued by E. B. Boyd, Agent, on behalf of the following lines under authority shown opposite each line:

CARRIERS.	FX1-No. Except as noted.
Atchison, Topeka & Santa Fe Ry. Co.....	67
Gulf, Colorado & Santa Fe Ry. Co.....	37
Kansas City Southern Ry. Co.....	38
Midland Valley R. R. Co.....	29
St. Louis-San Francisco Ry. Co.....	156
Texarkana & Ft. Smith Ry. Co.....	30

*Pages 145 and 146.*

## GLEN-POOL TANK LINE COMPANY.

Cars marked: "G.P.T.X."

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
401	8048	503	8250
406	8045	554	8254
436	8042		

*Pages 150 to 157, inclusive.*

## GULF REFINING COMPANY.

Cars marked: "G. R. C. X."

Used for transporting petroleum and its products.

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
764	8044	1228	8089
1116	8090	1250	8098



Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
1277	8093	2123	8080
1335	8090	2124	8084
1400	8093	2149	8083
1430	8095	2150	8074
1431	8090	2151	8079
1712	8101	2154	8078
1726	8097	2159	8079
1744	8096	2160	8084
1816	8212	2166	8078
1854	8176	2171	8079
1979	8015	2172	8082
2101	8080	2177	8085
2103	8084	2178	8074
2106	8077	2182	8080
2107	8080	2183	8078
2108	8084	2189	8079
2115	8075	2197	8077
2116	8083	2198	8080
2119	8084	2199	8078
2120	8077		

### Government's Exhibit 55.

Stamp: Received Interstate Commerce Commission  
 51747 Aug 16 1918 Division of Tariffs Stamp: Can-  
 celled by I. C. C. No. A-1029 8-8-1919. I. C. C. No. A-906.  
 Cancels I. C. C. No. A-826.

United States Railroad Administration; W. G. McAdoo,  
 Director General of Railroads. \* \* \*

*Circular No. 6-N*, Cancels *Circular No. 6-M* \* \* \* of  
 United States and Canadian Railroads listed on pages 8 to  
 16 herein. Showing capacities of Tank Cars used in the trans-  
 portation of Liquid Freight.

The provisions of this circular apply only on traffic cov-  
 ered by tariffs which make reference thereto, or preceding  
 issues thereof, or in connection with tariffs which refer to  
 publications superseded by preceding issues of this circular,  
 or on traffic covered by tariffs governed by classifications  
 which make reference thereto.

Issued August 16, 1918. Effective August 26, 1918 (ex-  
 cept as noted in individual items).

1200 GULF REFINING COMPANY, A CORPORATION, *v*8.

Published for the Director General of Railroads and filed on one day's notice with the Interstate Commerce Commission under authority of Section 2, of Circular No. 1-A of the Director, Division of Traffic, dated July 1, 1918, and under special permission of the Interstate Commerce Commission No. 47244 of July 31, 1918.

Issued by E. B. Boyd, Agent, Chicago.

. . . . .

*Pages 8 to 16, inclusive.*

ISSUING CARRIERS.

This circular is issued by E. B. Boyd, Agent, on behalf of the following lines under authority shown opposite each line:

CARRIERS.	FX1-No. Except as noted.
Atchison, Topeka & Santa Fe Ry. Co.....	67
Gulf, Colorado & Santa Fe Ry. Co.....	37
Kansas City Southern Ry. Co.....	38
Midland Valley R. R. Co. ....	29
St. Louis-San Francisco Ry. Co.....	156
Texarkana & Ft. Smith Ry. Co.....	30

*Pages 168 to 176, inclusive.*

GULF REFINING COMPANY.

Cars marked: "G.R.C.X."

Used for transporting petroleum and its products.

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
251	6510	1455	8090
745	8078	1470	8098
1381	8090	1611	8017
1383	8096	1707	8101
1446	8093	1762	8098

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
1930	8049	2157	8072
1967	8009	2170	8084
1976	8006	2173	8074
2110	8081	2185	8080
2112	8083	2194	8081
2113	8078	2196	8083
2155	8080		

Pages 294 and 298.

PROCTER & GAMBLE COMPANY.

Cars marked: P.G.X.

Car No.	Full capacity of shell. Gallons.
1549	8029

UNITED STATES RAILROAD ADMINISTRATION.

W. G. McAdoo, *Director General of Railroads.*

*Supplement No. 18.*

• • • • •  
to

• • • • •  
I. C. C. No. A-906.

*Supplement No. 18.*

• • • • •  
to

Circular No. 6-N.

• • • • •

Issued October 21, 1918. Effective November 1, 1918  
(except as noted in individual items).

Issued under authority of Rule 10, Interstate Commerce  
Commission Tariff Circular No. 18-A.

Issued by E. B. Boyd, Agent, Chicago.

(Stamp: Received Interstate Commerce Commission  
59378 Oct 22 1918 Division of Tariffs)

• • • • •

Page 7.

## GULF REFINING COMPANY.

Car No.	Full capacity of shell. Gallons.	Car No.	Full capacity of shell. Gallons.
2200	8072	2240	8072
2207	8070	2245	8072
2209	8065	2248	8065
2223	8065	2249	8062
2230	8072		

**Government's Exhibit 56.**

Only two supplements to this Tariff will be in effect at any time.

*I. C. C. No. 1253* Cancels *I. C. C. No. 1219*.

## UNITED STATES RAILROAD ADMINISTRATION,

W. G. McAdoo, Director General of Railroads

## SOUTHWESTERN LINES TARIFF NO. 79-B

Cancels Southwestern Lines' Tariff No. 79-A. For Individual Lines Tariff Numbers, current and cancelled, see page 3.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt carloads (see page 9) from Oklahoma producing points and Ft. Smith, Ark. (shown on pages 11 to 14, inclusive), to interstate points (see pages 15 to 18, inclusive).

Governed, except as otherwise provided herein, by Western Classification No. 55 (R. C. Fyfe's *I. C. C. No. 13*), or reissues thereof.

The rates named in this tariff are subject to the conditions of the Carrier's bill of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this Tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this Tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the

carriers parties to this Tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein, and F. S. O. No. 7316 of May 27, 1918.

Issued November 20, 1918. *Effective December 31, 1918*; except as noted on page 5, where reference is made to note A, and on pages 11, 12, 13, 14, 21, 34 and 80, where reference is made to character (17).

Increases resulting from application of rule governing disposition of fractions contained in this schedule are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 909 of October 24, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

Changes which result from additions of or abandonment of stations and station facilities contained in this Tariff are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 250 of January 8, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

Issued by F. A. Leland, Agent, St. Louis, Mo.

Authority No. 26185. C. F. 4390.

(Stamped:) Received; Interstate Commerce Commission; 62606; Nov 23 1918; Division of Tariffs. Cancelled by I. C. C. No. 1338; Effective Dec 21 1919.

\* \* \* \* \*

Pages 4, 5, 6, 7, and 8.

#### PARTICIPATING CARRIERS.

*	NAME OF CARRIERS	Under power of attorney to F. A. Leland, Agent F X 1, No.	*
*	Atchison, Topeka and Santa Fe Ry. Co. (The)...	33	..
*	Gulf, Colorado & Santa Fe Ry. Co.....	39	*
*	Houston & Texas Central R. R. Co.....	16	*
*	Kansas City Southern Ry. Co. (The).....	24	*

# 1204 GULF REFINING COMPANY, A CORPORATION, vs.

Midland Valley R. R. Co.....	18	
St. Louis-San Francisco Ry. Co.....	137	
Texarkana & Ft. Smith Ry. Co.....	20	
Texas and New Orleans R. R. Co.....	12	

Pages 11 and 12.

## OKLAHOMA (\*\*\* ) PRODUCING POINTS.

POINTS	Railroad Location	Group and Rate Basis *
Cushing.....	A. T. & S. F.....	A..... *
Drumright..... (See notes 2 ***)	A. T. & S. F.....	(Cushing (A.T.&S.F.) ( rate plus one cent ( per one hundred ( pounds.....
Jenks.....	M. V. ....	A..... *
Kiefer.....	(St. L-S. F..... (M. V.	A..... *

Page 14.

NOTE 2. Rates from Drumright, \*\*\* apply via Cushing, Okla., and A. T. & S. F. Ry. only.

Page 20.

## GENERAL APPLICATION OF RATES.

ITEM NO.	SUBJECT	APPLICATION
5	Commodity Descriptions	Where reference is made to this Item the rates apply on: (For rates, see pages *** 44 to 48, inclusive, ***) COLUMN 1: Petroleum Oil and its Products *** listed under head of "Petroleum and Petroleum Products," and rated Fifth class in current Western Classification; ***

Page 21.

## RULES AND CONDITIONS.

SUBJECT	ITEM NO.	RULES
Extent to which rates are governed by Western Classification	57	<p>The ratings, rules and regulations, estimated and minimum weights, shipping and packing requirements, allowances and privileges, or other provisions or conditions authorized by this Tariff, abrogate and supersede those of Western Classification, in conflict.</p> <p>When the ratings in this Tariff are silent as to rules and regulations, estimated and minimum weights, shipping and packing requirements, allowances and privileges or other provisions or conditions, the ratings which are prescribed in such commodity items shall be subject to the terms (including estimated and minimum weights, shipping and packing requirements, or other provisions or conditions), prescribed for in connection with the ratings in the current Western Classification, on the same commodity.</p>

Page 22.

## RULES AND CONDITIONS.

SUBJECT	ITEM NO.	RULES
Minimum Weights on Commodities in Tank Cars.	90	<p>1. The weights and charges on shipments in tank cars, shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-N, E. B. Boyd's I. C. C. No. A-906, or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections 2, 3 and 4—unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.</p> <p>2. When shipments of Inflammable Liquids, subject to Section 1825, Rule 44 of current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the two (2) per cent outage as required, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the two (2) per cent outage. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.</p>



# 1206 GULF REFINING COMPANY, A CORPORATION, vS.

Pages 47 and 48.

Petroleum and its Products, as described in Item No. 5, or re-issues.

TO	FROM (See pages 11 to 14, inclusive.) Groups A *** Columns (See Item 5, or reissues 1 *** Rates in Cents Per 100 Pounds									
	TEXAS POINTS (***)									
	Port Arthur. . . . .	43½								
	West Port Arthur. . . . .	43½								

Pages 62 and 66.

TO	Crude *** Petroleum Oil *** FROM (See pages 11 to 14, inclusive) Groups A, *** Rates in Cents Per 100 Pounds									
	TEXAS POINTS (***)									
	Port Arthur. . . . .	22								
	West Port Arthur. . . . .	22								

Page 90.

Rate Section No. 2.

## MISCELLANEOUS RATES.

Item No.	COMMODITY	FROM (Oklahoma Points)	TO	Rates in cents per 100 lbs.
660	Gasoline in tank cars, minimum weight as provided in Item No. 90, or re-issues. . . . .	Kiefer. . . .	Port Arthur, Tex. West Port Arthur, Tex.	37½

Page 92.

## MISCELLANEOUS RATES.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No 6-N, E. B. Boyd's I. C. C. No. A-906), or reissues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the trucks will govern as minimum.

TO TEXAS STATIONS ***										Rates in cents per 100 pounds.
Item No. 715.										
From OKLAHOMA POINTS										
Cushing										
T. & N. O. R. R. STATIONS:										
West Port Arthur.....										24
Port Arthur.....										24
T. & FT. S. RY. STATIONS:										
All Stations.....										24

TO TEXAS STATIONS ***										Rates in cents per 100 pounds.
Item No. 705.										
FROM										
Jenks. ....Okla.										
Kiefer. ....Okla.										
Port Arthur .....										24

Supplement No. 10 to I. C. C. No. 1219. *Supplement No. 5 to I. C. C. 1253.* Supplement No. 1 contains all changes from the original tariff that are effective on the date hereof.

UNITED STATES RAILROAD ADMINISTRATION,

W. G. McAdoo, Director General of Railroads

SOUTHWESTERN LINES TARIFF NO. 79-B

*Supplement No. 10.*

SOUTHWESTERN LINES TARIFF NO. 79-A

For Individual Lines' Tariff Numbers, see page 2.

*Supplement No. 1.*

Supplement No. 1 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt tar, asphaltum, axle grease and petroleum liquid asphalt carloads (see page 9 of tariff) from Oklahoma producing points and Ft. Smith, Ark. (shown on pages 11 to 14, inclusive, of tariff, as amended) to interstate points (see pages 15 to 18, inclusive, of tariff, as amended).

Governed, except as otherwise provided herein, by Western Classification No. 55 (R. C. Fyfe's I. C. C. No. 13), or reissues thereof.

The rates named in this tariff are subject to the conditions of the Carrier's bill of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this Tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this Tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this Tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein, and F. S. O. No. 7316 of May 27, 1918.

Issued December 16, 1918. *Effective January 31, 1919*; except as noted on pages 2, 3, 4 and 5, and in other individual items).

Changes which result from additions of or abandonment of stations and station facilities contained in this Tariff are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 250 of January 8, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

Issued by F. A. Leland, Agent, St. Louis, Mo. (Appointment Notice No. 2.)

Authority No. 26214.

(Stamped:) Received; Interstate Commerce Commission; 1830; Dec 19 1918; Division of Tariffs.

\* \* \* \* \*

Page 3.

RULES AND CONDITIONS.

SUBJECT	Item No.	RULES.
Minimum weights on commodities in Tank Cars	90-A cancels	<p>1. The weights and charges on shipments in tank cars, shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-N, E. B. Boyd's I. C. C. No. A-906, or reissues), at actual or estimated weights provided in current Western Classification—except as provided in Sections 2, 3 and 4—unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.</p> <p>2. When shipments of Inflammable Liquids, subject to Interstate Commerce Commission's Regulations for the Transportation of Dangerous Articles other than Explosives by Freight as provided in current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the outage as required by Section 1825-A of Regulations referred to, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the outage prescribed. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.</p>

\* \* \* \* \*

*Supplement No. 2 to I. C. C. No. 1253.* Cancels Supplement No. 1. Supplement No. 2 contains all changes from the original tariff that are effective on the date hereof.

UNITED STATES RAILROAD ADMINISTRATION,  
Director General of Railroads

SOUTHWESTERN LINES TARIFF NO. 79-B  
For Individual Lines' Tariff Numbers, see page 2.

*Supplement No. 2*

Cancels Supplement No. 1. Supplement No. 2 contains all changes from the original tariff that are effective on the date hereof.

Local, joint and proportional tariff, applying on petroleum and petroleum products, asphalt, asphalt rock, asphalt

tar, asphaltum, axle grease and petroleum liquid asphalt carloads (see page 9 of tariff) as amended, from Oklahoma producing points and Ft. Smith, Ark. (shown on pages 11 to 14, inclusive, of tariff, as amended), to interstate points (see pages 15 to 18, inclusive, of tariff, as amended).

Governed, except as otherwise provided herein, by Western Classification No. 55 (R. C. Fyfe's I. C. C. No. 13), or reissues thereof.

The rates named in this tariff are subject to the conditions of the Carrier's bill of lading.

By authority of Rule 77 of Interstate Commerce Commission Tariff Circular No. 18-A, rates in this Tariff are not made applicable FROM all intermediate points. Upon reasonable request therefor, rates which will not exceed those in effect, and specifically published in this Tariff from the next more distant point on the same railroad, will, under authority granted by the Interstate Commerce Commission, be established by the carriers parties to this Tariff from any intermediate point, upon one day's notice to the Commission and to the public.

This Tariff contains rates that are higher for shorter distances than for longer distances over the same route. Such departure from the terms of the Amended Fourth Section of the Act to Regulate Commerce is permitted by authority of Interstate Commerce Commission Fourth Section Orders, as indicated in individual items herein, and F. S. O. No. 7316 of May 27, 1918.

Issued January 17, 1919. *Effective March 1, 1919* (except as noted on page 6, and in other individual items).

Changes which result from additions of or abandonment of stations and station facilities contained in this Tariff are filed under authority of the Interstate Commerce Commission's Fifteenth Section Order No. 250 of January 8, 1918, without formal hearing, which approval shall not affect any subsequent proceeding relative thereto.

Issued by F. A. Leland, Agent, St. Louis, Mo. (Appointment Notice No. 2.)

Authority No. 26291.

(Stamped:) Received; Interstate Commerce Commission; 5303; Jan 18 1919; Division of Tariffs.

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Page 3.

## RULES AND CONDITIONS.

SUBJECT	ITEM NO.	RULES
Minimum weights on commodities in tank cars.	90-A cancels 90	<p>1. The weights and charges on shipments in tank cars, shall be based on the full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-N, E. B. Boyd's I. C. C. No. A-906, or re-issues), at actual or estimated weights provided in current Western Classification—except as provided in Sections 2, 3 and 4—unless the weight carrying capacity of the car trucks is less, in which case the actual weight, subject to the weight carrying capacity of the car trucks will govern as a minimum.</p> <p>2. When shipments of Inflammable Liquids, subject to Interstate Commerce Commission's Regulations for the Transportation of Dangerous Articles other than Explosives by Freight as provided in current Western Classification, are loaded in tank cars, the domes of which are not of sufficient capacity to cover the outage as required by Section 1325-A of Regulations referred to, an allowance will be made from the shell capacity of tank, to cover the difference between the dome capacity and the outage prescribed. Shippers must show on bills of lading or shipping receipt both the shell and dome capacity of car.</p>

Re-issue; effective  
January 31, 1919, in  
Supplement No. 1:

Page 6.

Rate Section No. 2.

## MISCELLANEOUS RATES.

Rates in cents  
per 100 pounds.

Unrefined Naphtha, in tank cars, minimum weight full shell capacity of the tank (as shown in United States and Canadian Railroads' Circular No. 6-N, E. B. Boyd's I. C. C. No. A-906), or re-issues, at estimated weight of 6.6 pounds per gallon, unless the weight carrying capacity of the car trucks is less, in which case the actual weight subject to the weight carrying capacity of the trucks will govern as minimum.

TO	RATES
Item No. 715-A, Cancels 715.	
From OKLAHOMA POINTS.	
Cushing	
T. & N. O. R. R. STATIONS:	
West Port Arthur.....	24
Port Arthur.....	24
T. & FT. S. RY. STATIONS:	
All Stations.....	24

*Supplement No. 3.*

To I. C. C. No. 1253, Cancels Supplement No. 2. Supplement No. 3 contains all changes from the original tariff that are effective on the date hereof.

UNITED STATES RAILROAD ADMINISTRATION, DIRECTOR GENERAL OF RAILROADS, SOUTHWESTERN LINES TARIFF NO. 79-B.

For Individual Lines' Tariff Numbers, see page 2.

Supplement No. 3, Cancels Supplement No. 2. Supplement No. 3 contains all changes from the original tariff that are effective on the date hereof.

Local, Joint and Proportional Tariff applying on Petroleum and Petroleum Products, \* \* \* Carloads, \* \* \* From Oklahoma Producing Points and Ft. Smith, Ark., (Shown on pages 11 to 14, inclusive, of Tariff, as amended) to Interstate Points (See pages 15 to 18, inclusive, of Tariff, as amended)

Governed, except as otherwise provided herein, by Western Classification No. 55 (R. C. Fyfe's I. C. C. No. 13), or reissues thereof.

• • • • •  
Issued February 8, 1919. Effective March 21, 1919.

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Issued by F. A. Leland, Agent, St. Louis, Mo. \* \* \*

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**Government's Exhibit 57.**

*Tariff Circular No. 18-A.*

Contains revision of and cancels tariff Circular 17-A and Supplement No. 1. Also cancels special orders No. 4. No. 7, and No. 11, and special circulars (Bureau of Tariffs) No. 8 and No. 9.

INTERSTATE COMMERCE COMMISSION.

Regulations to Govern the Construction and Filing of Freight Tariffs and Classifications and Passenger Fare Schedules.

Administrative Rulings.

Revised by order of Commission. Approved February 13, 1911; Effective March 31, 1911 (except as noted in individual items).

Washington Government Printing Office 1911

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*Page 3.*

Regulations Issued by the Interstate Commerce Commission,  
Under Authority of Section 6 of the Act to Regulate  
Commerce as Amended June 18, 1910, to Govern the Con-  
struction and Filing of Freight Tariffs and Classifica-  
tions, and Passenger Fare Schedules, by Common Car-  
riers Wholly by Railroad or Partly by Railroad and  
Partly by Water, as Defined in Said Act.

Approved February 13, 1911. Effective March 31, 1911  
(except as noted in individual items).

### Freight Tariffs and Classifications.

The term "joint rate," as used herein, is construed to  
mean a rate that extends over the lines of two or more car-  
riers and that is made by agreement between such carriers.

"Joint tariffs" are those which contain or are made up  
from such "joint rates."

*Page 19.*

(i) In case of change of ownership or control of a car-  
rier, the carrier whose line is absorbed, taken over, or pur-  
chased by another carrier shall unite with that other carrier  
in common supplements to the tariffs on file with the Commis-  
sion, on the one hand withdrawing and on the other hand  
accepting and establishing such tariffs and all effective (20)  
supplements thereto. Such common supplements shall be ex-  
ecuted jointly by the traffic officers of both the old and the new  
carriers, shall be numbered consecutively as supplements to  
the tariff (even if of less than five pages) to which they are  
directed, and may be made effective on five days' notice to  
the public and the Commission by noting thereon reference  
to this rule. Such common supplements will not be counted  
against the number of supplements permitted to such tariff  
under paragraph (c) of Rule 9. Amendments to such tariffs  
must thereafter be filed in consecutively numbered supple-  
ments thereto until the tariffs are reissued. New tariffs re-  
issuing or superseding these shall be numbered in the I. C. C.  
series of the new carrier.

When a road or a part of a road is transferred from the operating control of one company to that of another, or when its name is changed, the existing tariffs issued by the company that surrenders control must be withdrawn by it and adopted by the company assuming control, as provided in the preceding paragraph.

(j) As to tariffs issued by other carriers or joint agents under concurrences or powers of attorney granted by the old carrier or company, the new carrier or company shall, if it intends to use such tariff publications and rates, issue, file, and post, with I. C. C. number, an adoption notice, substantially as follows:

The (name of carrier) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, filed with the Interstate Commerce Commission by the (name of old carrier) prior to (date) the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which it has heretofore filed with said Commission.

This notice may be made effective and be filed on immediate notice.

Similar adoption notice must be filed by a receiver when assuming possession and control of a carrier's lines.

Concurrences and powers of attorney so adopted by a carrier must, as soon as possible, be replaced and superseded by new concurrences and powers of attorney issued by and in the name of the new carrier or company, and in each instance canceling the concurrence or power of attorney superseded.

(21) The carrier surrendering control of the property has no lawful right to abandon its tariff except on lawful notice, and when it surrenders control of the property it surrenders all right to publish rates applicable thereto except under proper authority from the carrier or company to whose control the property passes. The public has a right to available and lawfully applicable rates over that property.

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*Supplement No. 3 to Tariff Circular No. 18-A. Cancels Supplement No. 2, and includes all changes to date hereof.*

## Interstate Commerce Commission

Supplement to Regulations to Govern the Construction and  
Filing of Freight Tariffs and Classifications and  
Passenger Fare Schedules.

## Administrative Rulings.

Issued by Order of Commission, February 4, 1913.  
Washington, 1913.

.....  
*Page 3.*  
.....

Paragraph (i) of Rule 9, Tariff Circular 18-A, is amended so that it will read as follows: (Adopted February 4, 1913.)

(i) In case of change of ownership or control of a carrier, or when a road or a part of a road is transferred from the operating control of one company to that of another, or when its name is changed, the carrier which will thereafter operate the road, if it intends to use the tariff publications and rates of the former operating company, shall issue, file, and post, with I. C. C. number, an adoption notice substantially as follows:

The (name of carrier) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, filed with the Interstate Commerce Commission by the (name of old carrier) prior to (date) the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which have been heretofore filed with said Commission.

(4) This notice may be made effective and be filed on immediate notice.

Similar adoption notice must be filed by a receiver when assuming possession and control of a carrier's lines.

Concurrences and powers of attorney so adopted by a carrier must, as soon as possible, be replaced and superseded by new concurrences and powers of attorney issued by and in the name of the new carrier or company, and in each instance canceling the concurrence or power of attorney superseded.

Paragraph (j) of Rule 9, Tariff Circular 18-A, is amended so that it will read as follows: (Adopted February 4, 1913.)

(j) A carrier whose line is absorbed, taken over, or purchased by another carrier shall unite with that other carrier

in the publication and filing of common supplements to the tariffs on file with the Commission, on the one hand withdrawing, and on the other hand accepting and establishing such tariffs and all effective supplements thereto. Such common supplements shall be executed jointly by the traffic officers of both the old and new carriers, shall be numbered consecutively as supplements to the tariffs (even if of less than five pages) to which they are directed, and may be made effective on *immediate* notice to the public and the Commission by noting thereon reference to this Rule. Such common supplements will not be counted against the number of supplements permitted to such tariff under paragraph (e) of Rule 9. Amendments to such tariffs must thereafter be filed in consecutively numbered supplements thereto until the tariffs are reissued. New tariffs reissuing or superseding these shall be numbered in the I. C. C. series of the new carrier.

The carrier surrendering control of the property has no lawful right to abandon its tariffs except on lawful notice, and when it surrenders control of the property it surrenders all right to publish rates applicable thereto except under proper authority from the carrier or company to whose control the property passes. The public has a right to available and lawfully applicable rates over that property.

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#### Government's Exhibit 61.

INTERSTATE COMMERCE COMMISSION  
Washington, D. C.

#### REGULATIONS FOR THE TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES BY FREIGHT AND EXPRESS AND SPECIFICATIONS FOR SHIPPING CONTAINERS.

Prescribed Under the Act of March 4, 1909, and Section 15 of the Act to Regulate Commerce as Amended June 18, 1910.

EFFECTIVE OCTOBER 1, 1914—Except as Noted Herein.

Paragraphs are numbered to correspond to the rules and regulations of the American Railway Association.

(Seal: Interstate Commerce Commission—1887.)

Washington, Government Printing Office, 1914.

THE INTERSTATE COMMERCE COMMISSION: James S. Harlan, of Illinois; Judson C. Clements, of Georgia; Edgar E.

Clark, of Iowa; Charles C. McChord, of Kentucky; Balthasar H. Meyer, of Wisconsin; Henry C. Hall, of Colorado; Winthrop M. Daniels, of New Jersey.

REGULATIONS FOR THE TRANSPORTATION OF  
DANGEROUS ARTICLES OTHER THAN EX-  
PLOSIVES BY FREIGHT.

Prescribed under act of March 4, 1909, and section 15 of the act to regulate commerce, as amended June 18, 1910. Revisior formulated and published July 2, 1914, effective October 1, 1914, and superseding regulations published January 2, 1912.

GENERAL NOTICE.

1701. Special precautions are necessary in preparing for shipment packages of dangerous articles other than explosives, and in handling these packages during transit. Any failure of a shipper, or of a carrier, to perform the duties imposed upon him in this respect may be the actual or a contributory cause not only of destructive fires but of disastrous explosions, since large quantities of explosives are transported frequently through thickly populated districts and in trains containing cars loaded with other dangerous articles.

1702. Sections 235 and 236 of the act of March 4, 1909, require the shipper of dangerous articles to describe and mark his packages properly and to inform the agent of the carrier of the true character of their contents. Heavy penalties are provided for the shipper who, knowingly, solicits the transportation of dangerous articles without complying with these requirements, as well as for the carrier that knowingly transports them.

1703. To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation by land in interstate commerce of dangerous articles other than explosives, the following regulations are prescribed to define these articles for freight transportation purposes, to state the precautions that must be observed by the shipper in preparing them for shipment, and by the carrier in handling them while in transit. It is the duty of each such carrier and shipper to make the prescribed regulations effective and to thoroughly instruct their employees in relation thereto.

1704. These regulations apply to all shipments of dangerous articles other than explosives, including carriers' material and supplies.

1705. Specifications as to containers, methods of packing for shipment, etc., will be considered and prescribed from time to time. Orders prescribing such specifications will be given effective dates as conditions and investigations may appear to warrant.

1706. The Bureau for the Safe Transportation of Explosives and other Dangerous Articles, hereinafter called Bureau of Explosives, organized by the railways under the auspices of the American Railway Association, is an efficient bureau in charge of an expert chief inspector. This bureau will make inspections and conduct investigations and will confer with manufacturers and shippers with a view to determining what specifications and regulations will within reasonable limits afford the highest degree of safety in packing and preparing these dangerous articles for shipment and in transporting the same. The Commission will seek to avail itself of the expert knowledge thus developed and, in formulating amendments to these regulations or specifications supplemental thereto, while not bound thereby, will give due weight to such expert opinions.

#### GENERAL RULES.

1711. Carriers that are subject to the act to regulate commerce must not receive shipments of articles defined as dangerous by these regulations when the shipments are not packed, marked, labeled, described, and certified as prescribed herein. The method of manufacture and packing of articles defined as dangerous by these regulations, so far as it affects safe transportation, must be open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives.

1712. All shipments of articles subject to these regulations offered for transportation in interstate commerce must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing.

The same description of contents must be marked plainly on the outside of each package.

In less-than-carload shipments each package must be marked also to show plainly the name and address of the consignee. This address, the name of contents, and the required label or "no label required" marking, should be as near together as practicable.

1713. All shipments of articles defined as dangerous by these regulations, and for which detailed instructions for pack-

ing are not given herein, must be securely packed in containers strong enough to stand without rupture or leakage of contents all ordinary shocks incident to reasonably careful handling during transit. It is the duty of shippers, where leakage from their shipping containers is known to be a probable source of fire or material damage to other freight, to exercise special care in constructing shipping containers for such articles, even though their names do not appear in the list of dangerous articles, paragraph 1807.

1714. Carriers must forward shipments of dangerous articles other than explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carriers' property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

1715. (a) *Serious violations of these regulations*, such as the discovery of leaking or broken packages of dangerous articles, *and accidents or fires* in connection with the transportation or storage on carrier's property of dangerous articles, must be reported by the carrier to the chief inspector of the Bureau of Explosives, 30 Vesey Street, New York City.

(b) Consignees should report promptly to the chief inspector, Bureau of Explosives, all instances of broken or defective containers in shipments of dangerous articles received by them.

#### SECTION I. INFORMATION AND DEFINITIONS.

1800. For transportation purposes dangerous articles other than explosives are divided into the following groups:

1. *Forbidden articles.*
2. *Acceptable articles.*

##### GROUP 1.—FORBIDDEN ARTICLES.

1801. The following are *forbidden articles*:

(a) Outside packages containing in the same compartment interior packages, the mixture of whose contents would be liable to cause a dangerous evolution of heat, gas, or corrosive materials.

(b) Cylinders containing gases capable of combining chemically.

(c) Packages containing dangerous articles in a leaking condition or in such an insecure condition as to make leakage probable during transit.

(d) Rags or cotton waste oily with more than 5 per cent of vegetable or animal oil, or wet rags.



(e) Charcoal screenings from wet charcoal, or wet screenings, or screenings that have been wet. (See par. 1833 (c).)

(f) Dangerous articles not properly packed, marked, labeled, described, and certified.

(g) Iron sponge and spent oxide that has not been properly oxidized during manufacture.

## GROUP 2.—ACCEPTABLE ARTICLES.

### Definitions

#### *Inflammable Liquids—Red Label.*

1802. This group includes any liquid or liquid mixture that gives off inflammable vapors (as determined by flash point from Tagliabue's open cup tester, as used for test of burning oils) at or below a temperature of 80° F.

#### *Inflammable Solids—Yellow Label.*

1803. This group includes all substances other than those classified as explosives that are liable under conditions incident to transportation to cause fires by self-ignition through friction, through absorption of moisture, or through spontaneous chemical changes.

#### *Oxidizing Materials—Yellow Label.*

1804. This group includes all substances, such as chlorates, permanganates, peroxides, and nitrates, that yield oxygen readily to stimulate the combustion of organic matter.

#### *Corrosive Liquids—White Label.*

1805. This group includes the strong mineral acids (in strength greater than one-half<sup>1</sup> concentrated, i. e., 47 per cent sulphuric, 34 per cent nitric, 20 per cent hydrochloric) and other strongly corrosive liquids that are liable to cause fires when mixed with chemicals or with organic matter, or are liable, in case of leakage from their shipping containers, to damage other freight materially.

#### *Compressed Gases—Red or Green (Gas) Label.*

1806. This group includes all inflammable or non-inflammable gases assembled for shipment under pressure exceeding 25 pounds per square inch, except when such gases are in cylinders or tubes not exceeding  $\frac{7}{8}$  inch outside diameter and of not more than 4 fluid ounces water capacity.

## LIST OF PRINCIPAL DANGEROUS ARTICLES.

1807. (a) The following list shows the names of well-known articles in general use, other than explosives, that are

(1) For express transportation, greater than one-fourth concentrated.

dangerous; the kind of label required on outside packages; the quantities that may be shipped in one outside package without a label when certified and marked "No label required," and the label exemptions on account of specified packing. (See column 5 of list.)

(b) When a shipment described under a name not in the following list is defined as a dangerous one by paragraphs 1802 to 1806, inclusive, the shipper must inform the carrier of the fact by use of the proper label prescribed herein, and the shipping order must show the certificate prescribed by paragraph 1867. The maximum quantity of any such article shipped in one outside package, without label, when certified and marked "No label required," except as specified herein, must not exceed the limit prescribed by column 3 of the list for dangerous articles of similar flash point or characteristic.

(c) Inflammable liquids as defined by paragraph 1802, in securely closed glass, earthenware, or metal containers of not exceeding one pint capacity each, when flash point is 20° F., or lower, and of not exceeding one quart capacity when flash point is above 20° F., packed and cushioned in fiberboard or corrugated strawboard containers, wooden boxes, kegs, or barrels, complying with shipping container specifications that apply, may be shipped without labels when certified and marked "No label required."

(d) A shipment described under a definite and proper name not in the following list and on a shipping order with no notation as to labels applied and no shipper's certificate, will be assumed by the carrier in the absence of knowledge to the contrary, to be not dangerous under these regulations.

(e) When articles described under names in the following list marked (\*) are not dangerous under the regulations, the shipper must, unless otherwise provided in said list, state on his shipping order, as a part of the description of such article "No label required," and must also furnish the certificate prescribed by paragraph 1867 and mark the package "No label required."

(f) When several dangerous articles are placed in one outside package without violating these regulations, labels must be applied, when the combined quantity of the articles of any one group exceeds the lowest limit prescribed by column 3 for any of the articles of that group that are included.

(g) When dangerous articles requiring the red label are shipped in the same outside package with dangerous articles requiring yellow or white labels, the outside package must be labeled with the red label only.

## LIST OF PRINCIPAL DANGEROUS ARTICLES.

Names of dangerous articles.	1		2		3	4	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
	Group names and flash points—						
	Inf. L.—Inflammable liquid.				Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required."	
	Inf. S.—Inflammable solid.						
	Oxi. M.—Oxidizing material.						
	Cor. L.—Corrosive liquid.						
	Comp. G.—Compressed gas.						

Benzol (benzene).....	Inf. L.....	20	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Benzine.....	do.....	†0	do.....	do.....	Do.
Bromine.....	Cor. L.....		5 pints.....	White.....	Par. 1853.
Bronzing liquid.....	Inf. L.....	0-70	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Burnt cotton.....	Inf. S.....		No exemption.	Yellow.....	Par. 1837.
Calcium phosphide.....	do.....		do.....	do.....	Par. 1835.
Carbon bisulphide.....	Inf. L.....	†0	5 pounds.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Celluloid scrap.....	Inf. S.....		No exemption.	Yellow.....	Par. 1839.
Cement, leather.....	Inf. L.....	†0	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Cement, liquid, n. o. s.....	do.....	0-80	do.....	do.....	Do.
*Cement, roofing (liquid).....	do.....	0-80	do.....	do.....	Do.
Cement, rubber.....	do.....	†0	do.....	do.....	Do.
Charcoal, wood, ground or pulverized.....	Inf. S.....		100 pounds.....	Yellow.....	(Par. 1833. Charcoal "in bottles," "in boxes," "in barrels," or "in tablets," "case-hardening charcoal," "animal charcoal," or "bone charcoal" is exempt from label and certificate requirements, when so described. Lump charcoal made by old kiln or pit method which provides long air exposure before shipment is exempt from label and placard requirements when certified and marked "No label required" or "No placard required.")
*Charcoal, wood, lump.....	do.....		2,000 pounds.....	do.....	(Par. 1833.
Charcoal, wood, screenings.....	do.....		No exemption.....	do.....	Pars. 1822 and 1841.
Chlorates, n. o. s.....	Oxi. M.....		25 pounds.....	do.....	Par. 1855.
Chloride of phosphorus.....	r. L.....		(in one shipment)	White.....	Do.
Chlorides, anhydrous, liquid.....	do.....		do.....	do.....	Pars. 1822, 1851, 1852 and 1855.
Chloride of sulphur.....	do.....		do.....	do.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Cleaning fluid (or liquid).....	Inf. L.....	0-80	1 gallon.....	Red.....	
*Coal tar light oil.....	do.....	0-80	do.....	do.....	Do.
*Coal-tar naphtha.....	do.....	0-80	do.....	do.....	Do.
Colloction.....	do.....	†0	do.....	do.....	Do.
Cologne spirits (alcohol).....	do.....	50	do.....	do.....	Do.
Columbian spirits (alcohol, wood).....	do.....	45	do.....	do.....	Do.

\*See paragraph 1807 (e).

†At or below.

## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

Names of dangerous articles.	Group names and flash points—	Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required"	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
1	2	3	4	5
•Compounds, paint or varnish removing, liquid.	Inf. L. ....	1 gallon.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
•Compounds, polishing liquid.	do ....	do .....	do .....	Do.
•Compounds, type cleansing, liquid.	do ....	do .....	do .....	Do.
•Compounds, vulcanizing.	do ....	do .....	do .....	Do.
•Compounds, vulcanizing.	Cor. L. ....	do .....	White.....	Para. 1822, 1851, 1852 and 1855.
•Distillate ..	Inf. L. ....	do .....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.
•Dressing, leather ..	do ....	do .....	do .....	Do.
•Driers, paint or japan ..	do ....	do .....	do .....	Do.
•Eradicators, paint or grease, liquid.	do ....	do .....	do .....	Do.
•Ether.....	do ....	5 pounds.....	do .....	Do.
•Extracts, liquid (flavoring) ..	do ....	1 gallon.....	do .....	Para. 1807 (c), 1822, 1824 to 1827. Bark, Tanner's, medicinal and wood extracts, are exempt from label and certificate requirements when properly so described.
Gases, compressed:	Comp. G. ....	No exemption.....	Red (gas) ..	Para. 1861 to 1863.
Acetylene (see Note 1) ..	do .....	do .....	Green (gas) ..	Para. 1861 and 1862.
Air, compressed.....	do .....	do .....	do .....	Do.
Anhydrous ammonia.....	do .....	do .....	do .....	Do.

Baugas.....	do	.....	do	.....	Red (gas) ..	Para. 1861 to 1863.
Carbonic acid.....	do	.....	do	.....	Green (gas) ..	Para. 1861 and 1862.
Chlorine.....	do	.....	do	.....	do	Do.
Coal gas.....	do	.....	do	.....	Red (gas) ..	Do.
Dental.....	do	.....	do	.....	Green (gas) ..	Do.
Hydrogen.....	do	.....	do	.....	Red (gas) ..	Para. 1861 to 1863.
Liquefied petroleum gas.....	do	.....	do	.....	do	Para. 1824 and 1861 to 1863.
Oxygen.....	do	.....	do	.....	Green (gas) ..	Para. 1861 and 1862.
Pintch.....	do	.....	do	.....	Red (gas) ..	Para. 1861 to 1863.
Sulphur dioxide.....	do	.....	do	.....	Green (gas) ..	Para. 1861 and 1862.
Compressed gases, n. o. s.....	do	.....	do	.....	Red or green (gas)	Para. 1861 to 1863.
Gas drips (hydrocarbon).....	Inf. L.....	†0	1 gallon.....	Red.....	do	Para. 1807 (c), 1822, 1824 to 1827.
Gasoline (see Note 1).....	do	†0	do	do	do	Para. 1807 (c), 1822, 1824 to 1827. Gasoline made by compressing natural gas or by blending liquefied petroleum gas with refinery gasoline or naphtha may be described and shipped as gasoline, provided the vapor pressure does not exceed 10 pounds per square inch.
High wines (alcohol).....	do	60-80	do	.....	do	Para. 1807 (c), 1822, 1824 to 1827.
*Insecticide (vermin exterminator, liquid).	do	0-80	1 gallon.....	do	do	Do.
Lacquer.....	do	0-80	do	.....	do	Para. 1807 (c), 1822, 1824 to 1827. (See Paint.)
Lead, nitrate of, in bags.....	Oxi. M.....	.....	100 pounds.....	Yellow.....	do	Para. 1822 and 1841. (See Nitrates.)
Liquefied petroleum gas.....	Inf. L.....	†0	No exemption.....	Red.....	do	Para. 1807 (c), 1822, 1824 to 1827.
Matches "Strike Anywhere".....	Inf. S.....	.....	do	Yellow.....	do	Para. 1822 and 1836.
Naphtha.....	Inf. L.....	†0	1 gallon.....	Red.....	do	Para. 1807 (c), 1822, 1824 to 1827.
*Naphtha distillate.....	do	0-80	do	do	do	Do.
Nitrates, in bags.....	Oxi. M.....	.....	100 pounds.....	Yellow.....	do	Para. 1822 and 1841. Nitrates in boxes, kegs or barrels are exempt from label and certificate requirements when properly so described.

†At or below.

\*See paragraph 1807 (e).

NOTE 1.—Automobiles and motor cycles equipped with securely closed acetylene gas cylinders or tanks containing gasoline are exempt from label and certificate requirements.

## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1 Names of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 6
Nitrocellulose, wet with solvent.	Inf. L. ....	No exemption.....	Red .....	Must contain not less than 30 per cent by weight of a solvent whose flash point is not lower than 40° F. and must be packed in glass bottles (par. 1824) or in securely closed metal vessels that will stand the drop tests prescribed for metal barrels. (Specification No. 6.) Par. 1834. Dry nitrocellulose and dry nitro-starch are high explosives. Para. 1807 (c), 1822, 1824 to 1827. Do.
Nitrocellulose or nitrostarch, wet with 20 per cent water •Oil, gas..... •Oil described as "Oil," or "Oil, n. o. s.," or "Petroleum oil," or "Petroleum oil, n. o. s."	Inf. S. .... Inf. L. .... do .....	do ..... 1 gallon..... do .....	Yellow..... Red..... do .....	
Paint aluminum, bronzing or gold.	do .....	do .....	do .....	See Paint.
•Paint, liquid.....	do .....	do .....	do .....	Para. 1807 (c), 1822, 1824 to 1827. Inflammable paint, varnish, wood filler, or wood stain, liquid, in class or earthenware vessels, or in metal cans, all packed in wooden barrels or



boxes and marked to show compliance with specifications (see par. 1822), are exempt from labels when marked and certified "No label required." Nonflammable paint is not subject to these packing requirements, but must be marked and certified "No label required." Dry paint is exempt from label and certificate requirements when properly so described.

Para. 1807 (c), 1822, 1824 to 1827.

Para. 1822 and 1841.

Do.

Do.

Para. 1807 (c), 1822, 1824 to 1827.

Do.

Para. 1822 and 1855.

Par. 1832.

Par. 1834.

do

do

Para. 1807 (c), 1822, 1824 to 1827.

Do.

Para. 1822 and 1841.

Do.

Para. 1822 and 1841. (See Nitrates.)

Para. 1822 and 1841.

Par. 1831.

Par. 1835.

do

do

Par. 1839.

Para. 1807 (c), 1822, 1824 to 1827.

Par. 1840.

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## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

Name of dangerous articles.	1		2		3	4	5	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	°F.	Kind of label required when quantity exceeds the limits prescribed for "No label required."	Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."				
Shellac, varnish.....	Inf. L.....	40-76	1 gallon.....	Red.....	1 gallon.....	Red.....	See Paint.	
Soda, chlorate of.....	Oxi. M.....		25 pounds.....	Yellow.....	25 pounds.....	Yellow.....	Para. 1822 and 1841.	
Soda, nitrate of, in bags.....	do.....		100 pounds..... (in one shipment)	do.....	100 pounds..... (in one shipment)	do.....	Para. 1822 and 1841.	(See Nitrates.)
Soda nitrite of.....	do.....		25 pounds.....	do.....	25 pounds.....	do.....	Para. 1822 and 1841.	
Sodium, metallic.....	Inf. S.....		No exemption.....	do.....	No exemption.....	do.....	Para. 1831.	
Sodium, peroxide.....	Oxi. M.....		do.....	do.....	do.....	do.....	Para. 1822 and 1841.	
Sodium sulphide (fused and ground).....	Inf. S.....		do.....	do.....	do.....	do.....	Para. 1835.	
Strontia, nitrate of, in bags..	Oxi. M.....		100 pounds.....	do.....	100 pounds.....	do.....	Para. 1822 and 1841.	(See Nitrates)
Sulphur, chloride of.....	Cor. L.....		(in one shipment)	White.....	No exemption.....	White.....	Para. 1822, 1851, 1852 and 1855.	
Tin, bichloride, liquid.....	do.....		do.....	do.....	do.....	do.....	Para. 1855.	
(tetrachloride of).		55	1 gallon.....	Red.....	1 gallon.....	Red.....	Para. 1807 (c), 1822, 1824 to 1827.	
Toluol (toluene).....	Inf. L.....		No exemption.....	Yellow.....	No exemption.....	Yellow.....	Para. 1834.	
Trinitrotoluol, wet with 10 per cent water.....	Inf. S.....							
*Varnish.....	Inf. L.....	0-80	1 gallon.....	Red.....	1 gallon.....	Red.....	See Paint.	
Zinc fine dust.....	Inf. S.....		10 pounds.....	Yellow.....	10 pounds.....	Yellow.....	Para. 1830.	

\*See paragraph 1807 (e).

†At or below.

## SECTION II. RULES FOR PACKING.

1821. Dangerous articles for which the yellow and white labels, respectively, are prescribed must not be packed in the same package, unless the bottle containing the corrosive liquid is cushioned by incombustible absorbent material in tightly closed metal containers, as prescribed by paragraph 1851. Cylinders of compressed gases must not be packed with other articles.

1822. (a) The construction of barrels, drums, boxes, cans, carboys, or other containers purchased subsequent to March 31, 1912, and used in shipping dangerous articles other than explosives must conform to specifications approved by the Interstate Commerce Commission that apply; and each container must be stamped, labeled or marked "Complies with I. C. C. Spec'n No. —," or equivalent marking as stated in the specification.

(b) In addition to standing the tests prescribed, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of damaged or broken packages on arrival at destination, must be reported to and recorded by the Bureau of Explosives, to the end that further use of any particular kind of package shown by experience to be inefficient may be prohibited by the Commission.

(c) Pending approval and promulgation by the Commission of specifications for types of shipping containers other than those for which specifications are published herein, containers may be used which after investigation made by the Bureau of Explosives, or by other competent testing laboratory in the presence of a representative of the Bureau of Explosives, are shown to possess the general efficiency and the protection against leakage of contents afforded by the standard types of corresponding capacity described in the specifications published herein, provided they are labeled or marked to show compliance with this requirement.

(d) Tank cars used for the shipment of dangerous articles other than explosives must comply with Master Car Builders' rules, and a tank car that leaks or one that has any defect which would make leakage during transit probable or that has not been tested and stenciled in compliance with Master Car Builders' rules must not be used for the shipment of any inflammable liquid.

(e) The tanks and their fittings must be examined by the shipper to see that they are in proper condition for loading.

Tanks must be examined for evidence of previous leaks; safety and outlet valves, dome covers and outlet-valve caps must be in proper condition before loading; after loading, tanks must not show any dropping of liquid contents at the seams or rivets, and should such dropping appear cars must be properly repaired; outlet valves must not permit more than a dropping of the liquid with valve caps off, otherwise valve must be reground and repaired. Dome covers and valve caps provided with suitable gaskets, must be properly screwed in place before cars are tendered to the carrier.

(f) Loaded tank cars tendered for shipment must be inspected by the carrier to see that they are not leaking, that the air and hand brakes, journal boxes, trucks and safety appliances are in proper condition for service, and that the car has been tested within limits prescribed by Master Car Builders' rules.

(g) Tests of all tank cars and their safety valves, as made in compliance with Master Car Builders' rules, must be certified by the party making the tests to the owner of the tank car and to the chief inspector, Bureau of Explosives; and this certification must show the initials and number of the tank car, the service for which it is suitable, the date of test, place of test, and by whom made.

#### INFLAMMABLE LIQUIDS—RED LABEL.

1824. (a) All inflammable liquids must be shipped in packages complying with specifications that apply as follows:

(b) In tightly closed metal cans of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11.

(c) In well-stoppered glass or earthenware vessels of not exceeding 1 gallon capacity, cushioned in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11, or in a well-stoppered glass or earthenware vessel of not exceeding 5 gallons capacity, well cushioned in a wooden box and not more than one such vessel in the box. The completed package must comply with swing and drop tests prescribed for boxed carboys by Specification No. 1.

(d) In well-stoppered glass, earthenware or metal vessels of not exceeding 1 pint capacity when flash point is 20° F., or lower, and 1 quart capacity when flash point is above 20° F., cushioned in fiber board or corrugated strawboard containers complying with Specification No. 24.

(e) In wooden kits of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2, or cushioned in wooden barrels or kegs complying with Specification No. 11.

(f) In metal-jacketed cans of not exceeding 10 gallons capacity, complying with Specification No. 23.

(g) In well-stoppered carboys of not exceeding 13 gallons capacity, cushioned in wooden boxes complying with Specification No. 1.

(h) In wooden barrels or kegs complying with Specification No. 10 when the flash point of the liquid is not lower than 20° F., or in wooden barrels or kegs complying with Specification No. 9 when the flash point is lower than 20° F., unless otherwise provided in the tariffs under which shipment moves.

(i) In metal barrels or drums complying with Specification No. 5.

(j) In tank cars complying with Master Car Builders' specifications, provided the vapor tension of the inflammable liquid corresponding to a temperature of 100° F. (90° F. Nov. 1 to Mar. 1) does not exceed 10 pounds per square inch. After January 1, 1915, a tank car must not be used for shipping inflammable liquids with flash point lower than 20° F., unless it has been tested with cold-water pressure of 60 pounds per square inch and stenciled as required by Master Car Builders' rules.

(k) Liquefied petroleum gas is a condensate from the "casing-head gas" of petroleum oil wells, whose vapor tension at 100° F. (90° F. Nov. 1 to Mar. 1) exceeds 10 pounds per square inch. Liquefied petroleum gas must be shipped in metal drums or barrels which comply with Specification No. 5, or in tank cars especially constructed and approved for this service by the Master Car Builders' Association. When the vapor pressure at 100° F. exceeds 25 pounds per square inch, cylinders as prescribed for compressed gases (see pars. 1861 to 1863, inclusive) must be used.

(l) Carbon bisulphide in interior packages of capacity greater than  $\frac{1}{2}$  gallon must be shipped in metal cans of not less than 28 gauge, boxed, complying with Specification No. 2; or in metal barrels or drums complying with Specification No. 5, such barrels or drums after January 1, 1916, not to exceed 55 gallons capacity. Carbon bisulphide may also be shipped in tank cars complying with paragraph 1824 (j).

1825. (a) Packages containing inflammable liquids must not be entirely filled. Sufficient interior space must be left vacant to prevent leakage or distortion of containers, due to

increase of temperature during transit. In all such packages, this vacant space must not be less than 2 per cent of the total capacity of the container. In tank cars the vacant space must not be less than 2 per cent of the total capacity of the tank, i. e., the shell and dome capacity, combined. If the dome of tank cars does not provide this 2 per cent, sufficient vacant space must be left in the shell of the tank to make up the difference.

(b) In packages containing alcohol, cologne spirits, high wines or other distilled spirits, the vacant interior space or allowance for wantage or ullage must conform to the United States Internal Revenue Regulations.

1826. Interior packages, containing 1 quart or more of an inflammable liquid, must be packed with their filling holes up and the top of the outside package must be plainly marked "THIS SIDE UP."

1827. Wooden-jacketed cans and wooden kits must not be used for the shipment of inflammable liquids, except as inside containers as provided by Specification No. 2 or 11.

#### LABELS.

1864. (a) Unless exempted on account of quantity or method of packing (see columns 3 and 5, list, par. 1807), all packages containing dangerous articles named in the list, paragraph 1807, and similar articles defined by paragraphs 1802 to 1806, inclusive, must be conspicuously labeled by the shipper. Labels should be applied when practicable to that part of the package bearing the consignee's name and address.

(b) Labels will not be required on packages in carload shipments to be unloaded by the consignee, but the proper placards must be obtained from the carrier and applied by the shipper to the car loaded by him. When it is known, however, that subsequent shipments of these packages in less-than-carload quantities, and in the original outside packages, will probably be made by the consignee, the original manufacturing shipper should attach labels to the packages.

(c) Shippers must furnish and attach the labels prescribed for their packages. Labels must not be applied to packages containing articles which are not subject to these regulations, nor to packages which are exempt from labels on account of quantity or method of packing. (See columns 3 and 5, list, par. 807.) Packages containing articles which are subject to these regulations and which are exempt from labels, must be plainly marked "NO LABEL REQUIRED."

(d) Containers shipped as "EMPTY" (except in carload shipments to be unloaded by consignee) must have the

old red, yellow, white, or green labels removed or completely covered by a square white label measuring not less than 6 inches in each side, and bearing thereon the word "EMPTY" in letters not less than 1 inch high.

1865. Labels must be of diamond shape, with each side 4 inches long. The color is *red* for inflammable liquids and compressed inflammable gases, *yellow* for inflammable solids and oxidizing materials, *green* for noninflammable compressed gases, and *white* for corrosive liquids. Labels must conform to standards as to size, printing, and color, and samples will be furnished, on request, by the chief inspector of the Bureau of Explosives, 30 Vesey street, New York City.

1866. The wording must be in black letters inside of a black line border measuring  $3\frac{1}{2}$  inches on each side, and as follows:<sup>1</sup>



Red label for inflammable liquids. (Reduced size.)

(1) The carrier's name and form number, or the shipper's name and address, may be printed on the labels, in type not larger than 10 point, if placed within the black line border and in the upper or lower corner of the diamond.





Yellow label for inflammable solids and oxidizing materials. (Reduced size.)

#### SHIPPING ORDERS.

1867. (a) Any article subject to these regulations whether label is required or not, must be described on the shipping order under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing.

(b) The shipping order must also show opposite the entry of the article the kind of label applied, or "No label required." For carload lots of such articles loaded by the shipper, the shipping order must show the kind of placard applied to the car, or "No placard required."

(c) The shipping order must also show the following certificate in the lower left-hand corner over the written or stamped facsimile signature of the shipper or of his duly authorized agent:

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the

regulations prescribed by the Interstate Commerce Commission.

(d) A shipping order that does not cover the shipment of an article classed as dangerous or doubtful by these regulations must not show thereon the label notation or the certificate prescribed for dangerous articles. Unnecessary certificates and label notations on shipping-order blanks must be canceled by the shipper.

(e) Whenever orders are placed in foreign countries for the importation of dangerous articles to be forwarded from port of entry by rail, the importer must furnish with the order to the foreign shipper and also to the forwarding agent at the port of entry, full and complete information as to the necessary packing, marking, and labeling required by these regulations. The forwarding agent must file with the originating carrier a certified shipping order and must see that the packages are properly packed, marked, and labeled.

#### WAYBILLING.

1873. The revenue or other waybill prepared from the shipping order, and transfer billing to connecting carrier for dangerous articles in list, paragraph 1807 and for other articles not in the list, but properly offered for shipment as dangerous articles, must properly describe these articles by classification or tariff name and state for less-than-carload shipments the color of label applied. For carload shipments they must show the kind of placard applied. The shipper's certificate must be in possession of the initial carrier when these indorsements are made on original billing.

The revenue waybill must also have plainly stamped or written at the top the words "INFLAMMABLE" or "ACID."

#### PLACARDS AND HANDLING CARS.

1901. Carriers must keep on hand an adequate supply of placards. Placards will be furnished by carriers to shippers for attachment to cars loaded by them.

1902. The carrier must verify the attachment of the proper placard by the shipper, as soon as a car requiring a placard is accepted by the carrier for transportation. A daily record showing the initials and numbers of all cars placarded must be kept on file at originating and transfer stations.

1903. (a) When the lading requiring the placard is removed from cars placards must be removed, except that "IN-

FLAMMABLE" placards must remain on *tank* cars moved as "empty" until such cars are known to have been properly cleaned with steam or reloaded with a substance that does not require the placard. As provided in paragraph 1941 (b) acid placards which are painted or stenciled on tank cars may be allowed to remain.

(b) Many fatal accidents have resulted from using lanterns or lighted matches to examine the interior of empty tank cars or in using hot rivets to repair unsteamed tank cars, which may contain inflammable vapors even when the previous lading was not of flash point below 80° F. Only incandescent electric lights should be used for this examination.

(c) Dome covers on empty tank cars must be securely placed in proper position before the cars are offered for movement.

1904. A carrier must not move from a station, yard, or siding a car known to require placards until the proper placards are attached. Placards lost in transit must be replaced by the carrier.

1905. (a) Tank cars placarded "INFLAMMABLE" must be placed in trains, if possible, at least 5 cars from the engine and 5 cars from the caboose, but must not be placed next to a car placarded "EXPLOSIVES." When length of train does not permit this, they must be placed as near the middle of the train as practicable; and in all cases carriers must see that their train crews are informed of the presence and location of such cars in the train.

Special care must be taken to avoid rough treatment and unnecessary switching of placarded tank cars.

(b) The carrier must see that its representative in charge of a freight train makes a thorough check of the cars bearing inflammable, acid, or explosive placards, with the billing, to see that all placards required are attached and those not required are removed.

1906. When cars protected by "INFLAMMABLE" placards are received or held in yards, particularly at night, the carrier must see that all necessary precautions are taken to prevent accidents. These precautions must include provision for quickly isolating them in case of fire.

1907. In classification yards, and in switching, it must be determined by inspection and trial that such a car has its brakes in first-class order before a draft containing it is cut; and a tank car placarded "INFLAMMABLE" must not be started down a ladder track, incline, or hump until the pre-

ceding car has cleared the ladder. It also must clear the ladder before another car is allowed to follow.

1908. (a) Cars bearing "INFLAMMABLE" placards and cars adjacent to them must be watched with extra care to discover hot journals.

(b) All available opportunities must be utilized, by noting the odor of inflammable liquids or otherwise, to discover leaks in these cars and to protect leaking cars from ignition of contents by flame of inspectors' lanterns or torches, by burning fuses, by switch lights, by switchthawing flames, by fires on side of track, by coals from locomotives passing over a roadbed strewn with leakage, or otherwise. (See par. 1956.)

1909. Whenever a tank car, loaded with an inflammable liquid, is discovered in transit in a leaking condition, all unnecessary movement of the car must cease until the unsafe condition of the car is remedied. Every possible precaution necessary to prevent ignition of the contents must be observed and the general precautions indicated in paragraphs 1951 to 1957, inclusive, should be followed.

1912. In unloading tank cars the following rules should be observed:

(a) The dome cover should be unscrewed by placing a bar between the dome-cover lug and the knob; the valve-rod handle in the dome should be moved back and forth a few times, to ascertain if the valve is properly seated, and if seated, the valve cap should then be removed with a suitable wrench, having a pail to catch any liquid that may be in the valve nozzle.

(b) The unloading connection should be securely attached to the valve nozzle, and valve should then be raised by working the valve-rod handle. The dome cover should be placed over the dome opening, resting on a piece of wood, to allow air to enter the tank. The dome cover should not be replaced while unloading, as this action may result in collapse of the tank. After tank is unloaded the valve should be seated, valve cap and dome cover replaced. "INFLAMMABLE" placards must not be removed.

(c) When necessary to unload tank cars from the dome, or when necessary to transfer the contents of one tank car through the outlet valve into the dome of another tank car, care should be observed to see that all of the connections are tight and that the pipe or hose, when inserted into the open manhole for pumping or filling purposes, is surrounded by wet burlap to prevent the escape of vapors and to avoid igniting them.

### INFLAMMABLE PLACARD.

1913. A placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars, containing an inflammable liquid and on strong tag board for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring  $10\frac{3}{4}$  inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a car containing one or more packages protected by the *red* or the *yellow* diamond label:



Inflammable placard. (Reduced size.)

### IN CASE OF A WRECK.

1946. In case of a wreck involving a car containing inflammable freight it should be assumed that packages are broken and that leakage has occurred which may cause fire if lighted lanterns or other flames are taken into or near these cars. As much of the train as possible should be moved to a place of safety. A car containing inflammable freight should be opened for ventilation and packages protected by red labels

and cylinders of compressed gases should be removed to a safe place. Substances spilled from broken packages protected by yellow label should also be carefully removed. Cylinders of compressed gases may be exploded if they are exposed to fire or struck a sharp blow and the flying fragments would then be dangerous. Inflammable liquids spilled from broken packages or tank cars should be well covered with dry earth before a lighted lantern, torch, or an engine is used in the vicinity. Acids spilled in cars should be covered with dry earth and the car floors should be thoroughly swept.

#### LEAKING TANK CARS.

1951. Action in any particular case will depend upon existing conditions, and good judgment will be necessary to avoid disastrous fires on the one hand and the useless sacrifice of valuable property on the other.

Volatile (or combustible) liquids, such as gasoline, naphtha, etc., in large quantity and spread over a large surface will form vapors that will ignite at a considerable distance, depending on the kind and quantity of liquid and the direction and force of the wind. Many of the liquids, regarded as safe to carry under ordinary conditions and transported in tank cars without the inflammable placard, should still be treated as dangerous in handling a wreck.

1952. When oil cars are leaking all lights or fires near them that can possibly be dispensed with should be extinguished or removed. Incandescent electric lights or portable electric flashlights should be used when available. Whenever practicable the work of handling a wrecked oil car should be done during daylight.

1953. Lanterns necessarily used for signaling should be kept on the side from which the wind is blowing and at as high an elevation as can be obtained. The vapors will go with the wind but not against it. The ash pan and fire box of a locomotive or steam derrick, especially on the side of a wrecked or leaking tank car toward which the wind is blowing, is a source of danger. Wrecks involving oil cars should in no case be approached with lighted pipes, cigars, or cigarettes.

1954. Effort should be made to prevent the spread of oil over a large surface by collecting it in any available vessels or draining it into a hole or depression at a safe distance from the track. When necessary, trenches should be dug for this purpose.

It is not safe to drain inflammable oil in large quantities into a sewer, since vapors may thus be carried to distant points and there ignited. Care should be exercised also not to permit oil to drain into streams of water which may be used by irrigation plants or for watering stock. Dry earth spread over spilled oil will decrease the rate of evaporation and the danger. A stream of oil on the ground should be dammed and dry earth be thrown on the liquid as it collects.

1955. Sudden shocks or jars that might produce sparks or friction should be avoided. When possible, jack the wrecked cars carefully into position after removing other cars and freight that might be injured by fire. Only as a last resort, to meet an emergency, should a wrecked tank car be moved by dragging, and when this is done all persons should be kept at a safe distance.

1956. No unnecessary attempt should be made to transport a damaged tank car from which inflammable liquid is leaking. Safety in short movements may be secured by attaching a vessel under small leaks to prevent spread of inflammable liquid over tracks. Cover tracks at intervals in rear of a moving car with fresh earth to prevent fire overtaking the car. Keep engines away; also spectators who may be smoking. If wrecked or derailed, and not in a position to obstruct or endanger traffic, it should have its leak stopped as far as possible and be left under guard until another tank car or sufficient vessels can be provided for the transfer of the liquid, which should be transferred by pumping when practicable.

Even a tank that is not leaking is liable to be ruptured by use of slings, and the slipping of chain slings may produce sparks. Saving of the contents of the tank is not as important as the prevention of fire.

1957. An empty or partially empty tank car, with or without placards, is very liable to contain explosive gases, and lights must not be brought near it.

1958. *Water will not quench an oil fire.*—If the fire can not be smothered by use of earth, steam, or wet blankets, effort should be concentrated on confining it and saving other property.

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**Government's Exhibit 62.**

**INTERSTATE COMMERCE COMMISSION**

Washington, D. C.

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**REGULATIONS FOR THE TRANSPORTATION OF EX-  
PLOSIVES AND OTHER DANGEROUS ARTICLES  
BY FREIGHT AND EXPRESS AND SPECIFICA-  
TIONS FOR SHIPPING CONTAINERS.**

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Prescribed Under the Act of March 4, 1909, and Section 15 of  
the Act to Regulate Commerce as Amended.

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REVISED JULY 15, 1918—Effective as Noted Herein.

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Paragraphs are numbered to correspond to the rules and  
regulations of the American Railway Association.

(Seal: Interstate Commerce Commission—1887.)

Washington, Government Printing Office, 1918.

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THE INTERSTATE COMMERCE COMMISSION: Winthrop M.  
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REGULATIONS FOR THE TRANSPORTATION OF  
DANGEROUS ARTICLES OTHER THAN EX-  
PLOSIVES BY FREIGHT.

Prescribed under act of March 4, 1909, and section 15 of the act to regulate commerce, as amended June 18, 1910. Revision formulated and published July 2, 1914, effective October 1, 1914, and superseding regulations published January 1, 1912. Further revision formulated and published July 15, 1918, effective September 1, 1918, superseding the regulations published July 2, 1914.

GENERAL NOTICE.

1701. Special precautions are necessary in preparing for shipment packages of dangerous articles other than explosives, and in handling these packages during transit. Any failure of a shipper, or of a carrier, to perform the duties imposed upon him in this respect may be the actual or a contributory cause not only of destructive fires but of disastrous explosions, since large quantities of explosives are transported frequently through thickly populated districts and in trains containing cars loaded with other dangerous articles.

1702. Sections 235 and 236 of the act of March 4, 1909, require the shipper of dangerous articles to describe and mark his packages properly and to inform the agent of the carrier of the true character of their contents. Heavy penalties are provided for the shipper who knowingly solicits the transportation of dangerous articles without complying with these requirements, as well as for the carrier that knowingly transports them.

1703. To promote the uniform enforcement of law and to minimize the dangers to life and property incident to the transportation by land in interstate commerce of dangerous articles other than explosives, the following regulations are prescribed to define these articles for freight transportation purposes, to state the precautions that must be observed by the shipper in preparing them for shipment, and by the carrier in handling them while in transit. It is the duty of each such carrier and shipper to make the prescribed regulations effective and to thoroughly instruct their employees in relation thereto.

1704. These regulations apply to all shipments of dangerous articles other than explosives, including carriers' material and supplies.

1705. Specifications as to containers, methods of packing for shipment, etc., will be considered and prescribed from time to time. Orders prescribing such specifications will be given effective dates as conditions and investigations may appear to warrant.

1706. The Bureau for the Safe Transportation of Explosives and other Dangerous Articles, hereinafter called Bureau of Explosives, organized by the railways under the auspices of the American Railway Association, is an efficient bureau in charge of an expert chief inspector. This bureau will make inspections and conduct investigations and will confer with manufacturers and shippers with a view to determining what specifications and regulations will within reasonable limits afford the highest degree of safety in packing and preparing these dangerous articles for shipment and in transporting the same. The Commission will seek to avail itself of the expert knowledge thus developed and, in formulating amendments to these regulations or specifications supplemental thereto, while not bound thereby, will give due weight to such expert opinions.

#### GENERAL RULES.

1711. Carriers that are subject to the act to regulate commerce must not receive shipments of articles defined as dangerous by these regulations when the shipments are not packed, marked, labeled, described, and certified as prescribed herein. The method of manufacture and packing of articles defined as dangerous by these regulations, so far as it affects safe transportation, must be open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives.

1712. All shipments of articles subject to these regulations offered for transportation in interstate commerce must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing.

The same description of contents must be marked plainly on the outside of each package. Tank cars must bear thereon a card showing proper name of contents.

In less-than-carload shipments each package must be

marked also to show plainly the name and address of the consignee. This address, the name of contents, and the required label or "no label required" marking, should be as near together as practicable.

1713. All shipments of articles defined as dangerous by these regulations, and for which detailed instructions for packing are not given herein, must be securely packed in containers strong enough to stand without rupture or leakage of contents all ordinary shocks incident to reasonably careful handling during transit. It is the duty of shippers, where leakage from their shipping containers is known to be a probable source of fire or material damage to other freight, to exercise special care in constructing shipping containers for such articles, even though their names do not appear in the list of dangerous articles, paragraph 1807.

1714. Carriers must forward shipments of dangerous articles other than explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carrier's property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

1715. (a) *Serious violations of these regulations*, such as the discovery of leaking or broken packages of dangerous articles, and accidents or fires in connection with the transportation or storage on carrier's property of dangerous articles, must be reported promptly by the carrier to the chief inspector of the Bureau of Explosives, 30 Vesey Street, New York City.

(b) Consignees should report promptly to the chief inspector, Bureau of Explosives, all instances of broken or defective containers in shipments of dangerous articles received by them.

1716. Containers that have been previously used for dangerous articles other than explosives, must have the old marks and labels removed before being used for the shipment of other articles.

## SECTION 1. INFORMATION AND DEFINITIONS.

1800. For transportation purposes dangerous articles other than explosives are divided into the following groups:

1. *Forbidden articles.*
2. *Acceptable articles.*

## GROUP 1.—FORBIDDEN ARTICLES.

1801. The following are *forbidden articles*:

(a) Outside packages containing in the same compartment interior packages, the mixture of whose contents would be liable to cause a dangerous evolution of heat, gas, or corrosive materials.

(b) Cylinders containing gases capable of combining chemically.

(c) Packages containing dangerous articles in a leaking condition or in such an insecure condition as to make leakage probable during transit.

(d) Rags or cotton waste oily with more than 5 per cent of vegetable or animal oil, or wet rags, or wet textile waste, or wet paper stock.

(e) Charcoal screenings from wet charcoal, or wet screenings, or screenings that have been wet. (See par. 1833 (c).)

(f) Dangerous articles not properly packed, marked, labeled, described, and certified.

(g) Iron sponge that has not been properly oxidized during manufacture; and spent oxide or spent iron mass except when loaded in open steel cars.

## GROUP 2—ACCEPTABLE ARTICLES.

## Definitions.

*Inflammable Liquids—Red Label*

1802. This group includes any liquid or liquid mixture that gives off inflammable vapors (as determined by flash point from Tagliabue's open-cup tester, as used for test of burning oils) at or below a temperature of 80° F.

*Inflammable Solids—Yellow Label*

1803. This group includes all substances other than those classified as explosives that are liable under conditions incident to transportation to cause fires by self-ignition through friction, through absorption of moisture, or through spontaneous chemical changes.

*Oxidizing Materials—Yellow Label*

1804. This group includes all substances, such as chlorates, permanganates, peroxides, and nitrates, that yield oxygen readily to stimulate the combustion of organic matter.

*Corrosive Liquids—White Label*

1805. This group includes the strong mineral acids (in strength greater than one-half<sup>1</sup> concentrated, i. e., 47 per cent sulphuric, 34 per cent nitric, 20 per cent hydrochloric) and other strongly corrosive liquids that are liable to cause fires when mixed with chemicals or with organic matter, or are liable in case of leakage from their shipping containers, to damage other freight materially.

*Compressed Gases—Red or Green (Gas) Label*

1806. This group includes all inflammable or noninflammable gases assembled for shipment under pressure exceeding 25 pounds per square inch, except when such gases are in cylinders or tubes not exceeding seven-eighths inch outside diameter and of not more than 4 fluid ounces water capacity.

## LIST OF PRINCIPAL DANGEROUS ARTICLES.

1807. (a) The following list shows the names of well-known articles in general use, other than explosives, that are dangerous; the kind of label required on outside packages; the quantities that may be shipped in one outside package without a label when certified and marked "No label required," and the label exemptions on account of specified packing. (See column 5 of list.)

(b) When a shipment described under a name not in the following list is defined as a dangerous one by paragraphs 1802 to 1806, inclusive, the shipper must inform the carrier of the fact by use of the proper label prescribed herein, and the shipping order must show the certificate prescribed by paragraph 1867. The maximum quantity of any such article shipped in one outside package without label, when certified and marked, "No label required," except as specified herein, must not exceed the limit prescribed by column 3 of the list for dangerous articles of similar flash point or characteristics.

(c) Inflammable liquids as defined by paragraph 1802, in securely closed glass, earthenware, or metal containers of not exceeding 1 pint capacity each (ether 1 1/10 pounds), when flash point is 20° F., or lower, and of not exceeding one quart capacity when flash point is above 20° F., packed and cushioned in fiber board or corrugated strawboard containers, wooden boxes, kegs, or barrels, complying with shipping con-

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NOTE—Hand fire extinguishers containing non-liquefied gas for the purpose of expelling fire-extinguishing contents are excepted.

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(1) For express transportation, greater than one-fourth concentrated.

tainer specifications that apply, may be shipped without labels when certified and marked "No label required."

(d) A shipment described under a definite and proper name not in the following list and on a shipping order with no notation as to labels applied and no shipper's certificate, will be assumed by the carrier in the absence of knowledge to the contrary, to be not dangerous under these regulations.

(e) When articles described under names in the following list marked with (\*) are not dangerous under the regulations, the shipper must, unless otherwise provided in said list, state on his shipping order, as a part of the description of such article, for less than carloads, "No label required," and for carloads, state on his shipping order "No placard required," and must also furnish the certificate prescribed by paragraph 1867 and mark the packages "No label required."

(f) When several dangerous articles are placed in one outside package without violating these regulations, labels must be applied, when the combined quantity of the articles of any one group exceeds the lowest limit prescribed by column 3 for any of the articles of that group that are included.

(g) When dangerous articles requiring the red label are shipped in the same outside package with dangerous articles requiring yellow or white labels, the outside package must be labeled with red label only.



## LIST OF PRINCIPAL DANGEROUS ARTICLES.

1	2	3	4	5
Names of dangerous articles.	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required."	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
*Acetate, amyl.....	Inf. L.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Acetate, ethyl.....	do.....	do.....	do.....	Do.
Acetate, methyl.....	do.....	do.....	do.....	Do.
Acetone.....	do.....	do.....	do.....	Do.
*Acid hydrochloric (muriatic).....	Cor. L.....	5 pints (6 pounds).....	White.....	Pars. 1805, 1851, 1852, and 1856.
Acid hydrofluoric.....	do.....	do.....	do.....	Pars. 1805, 1851, 1852, and 1854.
Acid hydrofluosilicic.....	do.....	do.....	do.....	Do.
Acid, nitrating (mixed acid).....	do.....	No exemption.....	do.....	Mixed nitric and sulphuric acids, par. 1858.
*Acid, nitric.....	do.....	do.....	do.....	Pars. 1805, 1851, 1852, and 1857.
*Acid, sulphuric (oil of vitriol).....	do.....	5 pints (9 pounds).....	do.....	Pars. 1805, 1851, 1852, and 1856.
Alcohol.....	Inf. L.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Alcohol, denatured.....	do.....	do.....	do.....	Do.
Alcohol, wood.....	do.....	do.....	do.....	Do.
Ammonium perchlorate.....	Oxi. M.....	25 pounds.....	Yellow.....	Pars. 1822 and 1841.
Barium, chlorate of.....	do.....	do.....	do.....	Do.
Barium, nitrate of, in bags.....	Oxi. M.....	100 pounds (in one shipment).....	do.....	Pars. 1822 and 1841. (See Nitrates.)
Barium peroxide (binioxide, dioxide).....	do.....	25 pounds.....	do.....	Pars. 1822 and 1841.
Benzol (benzene).....	Inf. L.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Benzine.....	do.....	do.....	do.....	Do.

Bromine.....	Cor. L.....	.....	5 pints.....	White.....	Par. 1853.
Bronzing liquid.....	Inf. L.....	0-70.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Burnt cotton.....	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1837.
Calcium phosphide.....	do.....	.....	do.....	do.....	Par. 1835.
Carbon bisulphide.....	Inf. L.....	†0.....	5 pounds.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Cashinghead gasoline.....	do.....	†0.....	1 gallon.....	do.....	Do.
Cashinghead naphtha.....	do.....	†0.....	do.....	do.....	Do.
Celluloid scrap.....	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1839.
Cement, leather.....	Inf. L.....	†0.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Cement, liquid, n. o. s.....	do.....	0-80.....	do.....	do.....	Do.
*Cement, roofing (liquid).....	do.....	0-80.....	do.....	do.....	Do.
Cement, rubber.....	do.....	†0.....	do.....	do.....	Do.
Charcoal, wood, ground, crushed, granulated or pulverized.....	Inf. S.....	.....	100 pounds (in one shipment).....	Yellow.....	(Par. 1833, Charcoal "in bottles," "in boxes," "in barrels," or "in tablets," "case-hardening charcoal," "animal charcoal," or "bone char- coal" is exempt from label and certificate requirements, when so described. Lump charcoal made by old kiln or pit method (which provides long air exposure before shipment is exempt from label and placard requirements when certified and marked "No label required" or "No placard re- quired.")
*Charcoal, wood, lumpy.....	do.....	.....	2,000 pounds (in one shipment).....	do.....	Par. 1833. Pars. 1822 and 1841
Charcoal, wood, screenings.....	do.....	.....	No exemption.....	do.....	Par. 1833.
Chlorates, n. o. s.....	Oxi. M.....	.....	25 pounds.....	do.....	Pars. 1822 and 1841
Chloride of phosphorus.....	Cor. L.....	.....	No exemption.....	White.....	Par. 1855 (b).
Chlorides, anhydrous, liquid.....	do.....	.....	do.....	do.....	Do.
Chloride of sulphur.....	do.....	.....	do.....	do.....	Pars. 1822, 1851, 1852, and 1855.
Chromic acid.....	Oxi. M.....	.....	25 pounds (in one shipment).....	Yellow.....	Pars. 1822 and 1841 (e).
*Cleaning fluid (or liquid).....	Inf. L.....	0-80.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
*Coal-tar light oil.....	do.....	0-80.....	do.....	do.....	Do.
*Coal-tar oil.....	do.....	0-80.....	do.....	do.....	Do.
*Coal-tar naphtha.....	do.....	0-80.....	do.....	do.....	Do.
Cobalt resinate, precipitated.....	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1840 (b).
	Inf. L.....	†0.....	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.

†At or below.

\*See paragraph 1807 (e).

## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1 Names of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid Comp. G.—Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
Collodion..... Cologne spirits (alcohol)..... Columbian spirits (alcohol, wood). *Compounds, paint or varnish removing, liquid. *Compounds, polishing, liquid *Compounds, type cleansing, liquid. *Compounds, vulcanizing..... *Compounds, vulcanizing..... *Distillate..... *Dressing, leather..... *Driers, paint or Japan..... *Electrolyte..... *Eradicators, paint or grease, liquid. Ether..... *Extracts, liquid (flavoring).....	Inf. L..... do ..... do ..... do ..... do ..... do ..... Cor. L..... Inf. L..... do ..... do ..... Cor. L..... Inf. L..... do ..... do .....	1 gallon..... do ..... do ..... do ..... do ..... do ..... do ..... do ..... do ..... do ..... 5 pints (9 pounds)..... 1 gallon..... 5 pounds..... 1 gallon.....	Red..... do ..... do ..... do ..... do ..... do ..... do ..... White..... Red..... do ..... do ..... White..... Red..... do ..... do .....	Pars. 1807 (c), 1823, 1824 to 1827. Do. Do. Pars. 1807 (c), 1823, 1824 to 1827. Do. Do. Do. Pars. 1822, 1851, 1852, and 1855. Pars. 1807 (c), 1822, 1824 to 1827. Do. Do. Pars. 1805, 1851, 1852, and 1855. Pars. 1807 (c), 1822, 1824 to 1827. Do. Pars. 1807 (c), 1822, 1824 to 1827.



## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

1 Names of dangerous articles.	2 Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	3 Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	4 Kind of label required when quantity exceeds the limits prescribed for "No label required."	5 References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
Liquefied petroleum gas..... Matches "Strike Anywhere". Naphtha..... •Naphtha distillate..... Nitrates, in bags.....	Inf. L..... Inf. S..... Inf. L..... do..... Oxi. M.....	°F. to ..... to ..... 0-80 .....	Red..... Yellow..... Red..... do..... Yellow.....	Pars. 1807 (c), 1822, 1824 to 1827. Pars. 1822 and 1836. Pars. 1807 (c), 1822, 1824 to 1827. Do. Pars. 1822 and 1841. Nitrates in boxes, kegs, or barrels are exempt from label and certificate requirements when properly so described.
Nitrocellulose, wet with solvent.	Inf. L.....	40	Red.....	Must contain not less than 30 per cent by weight of a solvent whose flash point is not lower than 40° F. and must be packed in glass bottles (par. 1824) or in securely closed metal vessels that will stand the drop tests prescribed for metal barrels. (Specification No. 5.)
Nitrocellulose or nitrostarch, wet with 20 per cent water •Oil, gas..... •Oil described as "Oil," or "Oil, n. o. s.," or "Petroleum"	Inf. S. .... Inf. L. .... do .....	..... 0-80 0-80	Yellow..... Red..... do .....	Par. 1834. Dry nitrocellulose and dry nitro-starch are high explosives. Pars. 1807 (c), 1822, 1824 to 1827. Do.



## LIST OF PRINCIPAL DANGEROUS ARTICLES—Continued.

Names of dangerous articles.	Group names and flash points— Inf. L.—Inflammable liquid. Inf. S.—Inflammable solid. Oxi. M.—Oxidizing material. Cor. L.—Corrosive liquid. Comp. G.—Compressed gas.	Maximum quantity in one outside package which may be shipped without a label when marked and certified "No label required."	Kind of label required when quantity exceeds the limits prescribed for "No label required."	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
1	2	3	4	5
Potash, nitrate of..... • Potash described as "Potash," or "Potash, n. o. s." Potassium, metallic..... Potassium sulphide (fused, chipped or concentrated) Pyroxylin plastic scrap..... Pyroxylin solution..... • Pyroxylin solvent n. o. s..... Resinates, precipitated of cobalt • Rubber scrap, shoddy, regenerated or reclaimed rubber	Oxi. M..... do..... Inf. S..... do..... do..... Inf. L..... do..... Inf. S..... do.....	25 pounds..... 25 pounds..... (in one shipment) No exemption..... do..... do..... 1 gallon..... do..... No exemption..... 10 pounds.....	Yellow..... do..... do..... do..... do..... Red..... do..... Yellow..... do..... do.....	Pars. 1822 and 1841 Pars. 1822 and 1841. Par. 1831. Par. 1835. Par. 1839. Pars. 1807 (c), 1822, 1824 to 1827. Do. Par. 1840 (b). Par. 1840. Rubber scrap not ground is exempt from label and certificate requirements, when properly so described. Pars. 1822 and 1841. See Paint. Pars. 1822 and 1841. Pars. 1822 and 1841. (See Nitrates.) Pars. 1822 and 1841. Par. 1831.
Saltpeter, in bags..... Shellac, varnish..... Soda, chlorate of..... Soda, nitrate of, in bags..... Soda, nitrite of..... Sodium, metallic.....	Oxi. M..... Inf. L..... Oxi. M..... do..... do..... Inf. S.....	100 pounds..... (in one shipment) 1 gallon..... 25 pounds..... 100 pounds..... (in one shipment) 25 pounds..... No exemption.....	do..... do..... Red..... Yellow..... do..... do..... do..... do.....	Pars. 1822 and 1841. See Paint. Pars. 1822 and 1841. Pars. 1822 and 1841. (See Nitrates.) Pars. 1822 and 1841. Pars. 1822 and 1841. Par. 1831.



Sodium peroxide.....	Oxi. M.....	.....	No exemption.....	Yellow.....	Pars. 1822 and 1841.
*Sodium sulphide (fused, chipped, or concentrated)	Inf. S.....	.....	do .....	do .....	Par. 1835.
*Solvent, gum or pyroxylin, n. o. s.	Inf. L.....	0-80	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Strontia, nitrate of, in bags..	Oxi. M.....	.....	100 pounds..... (in one shipment)	Yellow.....	Pars. 1822 and 1841. (See Nitrates.)
Sulphur, chloride of.....	Cor. L.....	.....	No exemption.....	White.....	Pars. 1822, 1852 and 1855.
Tetra-nitroaniline, wet with 20 per cent water.	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1834.
Tetra-nitromethylaniline, wet with 20 per cent water.	do .....	.....	do .....	do .....	Do.
Tin, bichloride, liquid (te- trachloride of).	Cor. L.....	.....	do .....	do .....	Par. 1855.
Toluol (toluene).....	Inf. L.....	55	1 gallon.....	Red.....	Pars. 1807 (c), 1822, 1824 to 1827.
Trinitrotoluol, wet with 10 per cent water.	Inf. S.....	.....	No exemption.....	Yellow.....	Par. 1834.
*Varnish.....	Inf. L.....	0-80	1 gallon.....	Red.....	See Paint.
Zinc flue dust.....	Inf. S.....	.....	10 pounds.....	Yellow.....	Par. 1830.

\*See paragraph 1807 (e).

7At or below.

## SECTION 2

## RULES FOR PACKING.

1821. Dangerous articles for which the yellow and white labels, respectively, are prescribed must not be packed in the same package, unless the bottle containing the corrosive liquid is cushioned by incombustible absorbent material in tightly closed metal containers, as prescribed by paragraph 1851. Cylinders of compressed gases must not be packed with other articles.

1822. (a) Barrels, drums, cylinders, boxes, cans, carboys, and other containers used hereafter for the shipment of dangerous articles other than explosives, must be made in accordance with approved specifications that apply and must be properly marked to show compliance with those specifications.

Such containers manufactured and used hereafter must be made in accordance with the specifications that apply as prescribed herein.

Such containers manufactured before the effective date of the specifications prescribed herein may be used if they were made in accordance with specifications previously approved.

Provided, that cylinders manufactured previous to the date on which specifications therefor were first made effective may be used if they comply with the requirements of paragraph 1861 of these regulations. Provided further, that carboys and metal barrels or drums manufactured and purchased prior to the date on which specifications were first made effective, may be used if they are in good condition and afford a package as secure as packages constructed under corresponding specifications.

(b) In addition to standing the tests prescribed, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of damaged or broken packages on arrival at destination, must be reported to and recorded by the Bureau of Explosives, to the end that further use of any particular kind of package shown by experience to be inefficient may be prohibited by the Commission.

(c) Pending approval and promulgation by the Commission of specifications for types of shipping containers other than those for which specifications are published herein, con-

tainers may be used which after investigation made by the Bureau of Explosives, or by other competent testing laboratory in the presence of a representative of the Bureau of Explosives, are shown to possess the general efficiency and the protection against leakage of contents afforded by the standard types of corresponding capacity described in the specifications published herein, provided they are labeled or marked to show compliance with this requirement.

(d) Tank cars used for the shipment of dangerous articles other than explosives must comply with Master Car Builders' specifications, and a tank car that leaks or one that has any defect which would make leakage during transit probable or that has not been tested and stenciled in compliance with Master Car Builders' specifications must not be used for the shipment of any inflammable liquid.

(e) The tanks and their fittings must be examined by the shipper to see that they are in proper condition for loading. Tanks must be examined for evidence of previous leaks; safety and outlet valves, dome covers, and outlet-valve caps must be in proper condition before loading; tanks must be loaded with outlet valve caps off; after loading, tanks must not show any dropping of liquid contents at the seams or rivets, and should such dropping appear cars must be properly repaired by calking; outlet valves must not permit more than a dropping of the liquid with valve caps off, otherwise valve must be reground and repaired. Dome covers and valve caps provided with suitable gaskets must be properly screwed in place before cars are tendered to the carrier.

(f) Loaded tank cars tendered for shipment must be inspected by the carrier to see that they are not leaking; that the air and hand brakes, journal boxes, trucks, and safety appliances are in proper condition for service; and that the car has been tested within limits prescribed by Master Car Builders' specifications.

(g) Tests of all tank cars and their safety valves, as made in compliance with Master Car Builders' specifications, must be certified by the party making the tests to the owner of the tank car and to the chief inspector, Bureau of Explosives, and this certification must show the initials and number of the tank car, the service for which it is suitable, the date of test, place of test, and by whom made.

#### *Inflammable Liquids—Red Label*

1824. (a) All inflammable liquids must be shipped in packages complying with specifications that apply, as follows:

(b) In tightly closed metal cans of not exceeding 10 gai-

lons capacity, packed in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11.

(c) In well-stoppered glass or earthenware vessels of not exceeding 1 gallon capacity, cushioned in wooden boxes complying with Specification No. 2 or cushioned in wooden barrels or kegs complying with Specification No. 11, or in a well-stoppered glass or earthenware vessel of not exceeding 5 gallons capacity, well cushioned in a wooden box and not more than one such vessel in the box. The completed package must comply with swing and drop tests prescribed for boxed carboys by Specification No. 1.

(d) In well-stoppered glass, earthenware, or metal vessels of not exceeding 1 pint capacity when flash point is 20° F., or lower, and 1 quart capacity when flash point is above 20° F., cushioned in fiber board or corrugated strawboard containers complying with Specification No. 24.

(e) In wooden kits of not exceeding 10 gallons capacity, packed in wooden boxes complying with Specification No. 2, or cushioned in wooden barrels or kegs complying with Specification No. 11.

(f) In metal-jacketed cans of not exceeding 10 gallons capacity, complying with Specification No. 23.

(g) In well-stoppered carboys of not exceeding 13 gallons capacity, cushioned in wooden boxes complying with Specification No. 1.

(h) In wooden barrels or kegs complying with Specification No. 10 when the flash point of the liquid is not lower than 20° F., or in wooden barrels or kegs complying with Specification No. 9 when the flash point is lower than 20° F., unless otherwise provided in the tariffs under which shipment moves.

(i) In metal barrels or drums complying with Specification No. 5.

(j) In tank cars complying with Master Car Builders' specifications provided the vapor tension of the inflammable liquid corresponding to a temperature of 100° F. does not exceed 10 pounds per square inch. A tank car must not be used for shipping inflammable liquids with flash point lower than 20° F., unless it has been tested with cold-water pressure of 60 pounds per square inch and stenciled as required by Master Car Builders' specifications, and is equipped with safety valves set to operate at 25 pounds per square inch, and with mechanical arrangement for closing dome cover as specified in paragraph 1824 (k).

(k) Liquid condensates from natural gas or from casing head gas of oil wells, made either by the compression or absorption process, alone or blended with other petroleum products, must be described as Liquefied Petroleum Gas when the vapor pressure<sup>1</sup> at 100° F. (90° F. November 1 to March 1) exceeds 10 pounds per square inch.

When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding 10 pounds per square inch, it must be described and shipped as Gasoline, Casinghead Gasoline, or Casinghead Naphtha.

Liquefied petroleum gas of vapor pressure exceeding 10 pounds per square inch and not exceeding 15 pounds per square inch, from April 1 to October 1 and 20 pounds per square inch from October 1 to April 1, must be shipped in metal drums or barrels which comply with Shipping Container Specification No. 5; or in special insulated tank cars approved for this service by the Master Car Builders' Association.

Liquefied petroleum gas of vapor pressure exceeding 15 or 20 pounds per square inch as provided herein, and not exceeding 25 pounds per square inch, must be shipped only in metal drums or barrels which comply with Shipping Container Specification No. 5.

Liquefied petroleum gas of vapor pressure exceeding 25 pounds per square inch must be shipped in cylinders as prescribed for compressed gases (see pars. 1861 to 1863, inclusive).

When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding 10 pounds per square inch it must be described as Gasoline or Casinghead Gasoline or Casinghead Naphtha and must be shipped in metal drums or barrels complying with Specification No. 5; or in ordinary tank cars, 60 pounds test class equipped with mechanical arrangement for closing of dome covers as specified in Master Car Builders' specifications for tank cars.

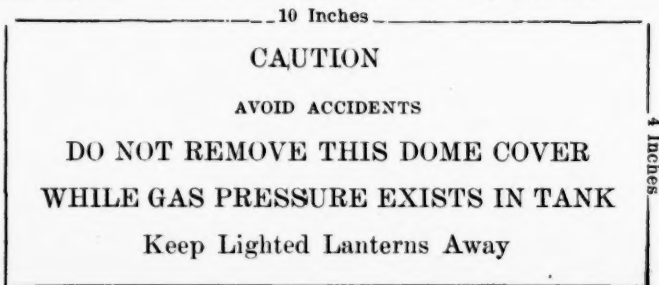
Every tank car containing liquid condensates, either blended or unblended, including liquefied petroleum gas, as defined herein, must have safety valves set to operate at 25 pounds per square inch with a tolerance of 3 pounds above or below, and the mechanical arrangements for closing the dome covers of such cars must either be such as to make it practically impossible to remove the dome cover while the interior of the car is subjected to pressure; or suitable vents that will

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(1) In measuring the vapor pressure the container may be vented momentarily at a temperature of 70° F.

be opened automatically by starting the operation of removing the dome cover must be provided:

The shipper must attach securely and conspicuously to the dome and dome cover three special white dome placards measuring 4x10 inches, bearing the following wording:



One placard must be attached to each side of the dome and one placard must be attached to the dome cover. The presence of these special dome placards must be noted on the shipping order by the shipper and by the carrier on the billing accompanying the car. Placards must conform to samples furnished by the Chief Inspector of the Bureau of Explosives.

(1) Carbon bisulphide in interior packages of capacity greater than one-half gallon must be shipped in metal cans of not less than 28 gauge, boxed, complying with Specification No. 2; or in metal barrels or drums complying with Specification No. 5, such barrels or drums not to exceed 55 gallons capacity. Carbon bisulphide may also be shipped in tank cars complying with paragraph 1824 (j).

1825. (a) Packages containing inflammable liquids must not be entirely filled. Sufficient interior space must be left vacant to prevent leakage or distortion of containers, due to increase of temperature during transit. In all such packages this vacant space must not be less than 2 per cent of the total capacity of the container. In tank cars the vacant space must not be less than 2 per cent<sup>1</sup> of the total capacity of the tank, i. e., the shell and dome capacity, combined. If the dome of tank cars does not provide this 2 per cent, sufficient vacant space must be left in the shell of the tank to make up the difference.

(b) In packages containing alcohol, cologne spirits, high

(1) An outage of 2 per cent is frequently insufficient for light petroleum products, owing to the fact that they expand more than heavier petroleum products when the temperature increases, and this rate of expansion varies with the specific gravity of the material. It is recommended that when

wines, or other distilled spirits of 150 proof or over the vacant interior space or allowance for wantage or ullage must be the maximum permitted by the United States Internal Revenue Regulations.

1826. Interior packages containing 1 quart or more of an inflammable liquid must be packed with their filling holes up and the top of the outside package must be plainly marked "THIS SIDE UP."

1827. Wooden-jacketed cans and wooden kits must not be used for the shipment of inflammable liquids, except as inside containers as provided by Specification No. 2 or 11.

#### LABELS.

1864. (a) Unless exempted on account of quantity or method of packing (see columns 3 and 5, list, par. 1807), all packages containing dangerous articles named in the list, paragraph 1807, and similar articles defined by paragraphs 1802 to 1806, inclusive, must be conspicuously labeled by the shipper. Labels should be applied when practicable to that part of the package bearing the consignee's name and address.

(b) Labels will not be required on packages in carload shipments to be unloaded by the consignee, but the proper placards must be obtained from the carrier and applied by the shipper to the car loaded by him. When it is known, however, that subsequent shipments of these packages in less-than-carload quantities, and in the original outside packages, will probably be made by the consignee, the original manufacturing shipper should attach labels to the packages.

(c) Shippers must furnish and attach the labels prescribed for their packages. Labels must not be applied to packages containing articles which are not subject to these regulations, nor to packages which are exempt from labels on account of quantity or method of packing. (See columns 3 and 5, list, par. 1807.) Packages containing articles which are subject to these regulations and which are thus exempt from labels, must be plainly marked "NO LABEL REQUIRED."

tank cars are loaded with gasoline, casing-head gasoline or casing-head naphtha (see Par. 1824 (k)) the outage in tank shall not be less than the following.

Temperature of product when loaded.	Minimum outage required when gravity is—		
	50-60° B. Per cent.	60-70° B. Per cent.	70-80° B. Per cent.
0- 60° F.....	3.2	3.5	4.1
61- 70° F.....	2.5	2.8	3.3
71- 80° F. . . . .	2.0	2.1	2.4
81-100° F. . . . .	2.0	2.0	2.0



(d) Containers shipped as "EMPTY" (except in car-load shipments to be unloaded by consignee) must have the old red, yellow, white, or green labels removed or completely covered by a square white label measuring not less than 6 inches on each side, and bearing thereon the word "EMPTY" in letters not less than 1 inch high

1865. Labels must be of diamond shape, with each side  $\frac{4}{8}$  inches long. The color is *red* for inflammable liquids and compressed inflammable gases, *yellow* for inflammable solids and oxidizing materials, *green* for noninflammable compressed gases, and *white* for corrosive liquids. Labels must conform to standards as to size, printing, and color, and samples will be furnished, on request, by the chief inspector of the Bureau of Explosives, 30 Vesey Street, New York City.

1866. The wording must be in black letters inside of a black line border measuring  $3\frac{1}{2}$  inches on each side, and as follows:<sup>1</sup>



Red label for inflammable liquids. (Reduced size.)

(1) The carrier's name and form number, or the shipper's name and address, may be printed on the labels, in type not larger than 10 point, if placed within the black line border and in the upper or lower corner of the diamond. A combination diamond-shaped label tag of proper color, bearing on one side the shipping information and on the reverse side the wording prescribed herein, will be permitted.



Yellow label for inflammable solids and oxidizing materials. (Reduced size.)

#### SHIPPING ORDERS.

1867. (a) Any article subject to these regulations whether label is required or not, must be described on the shipping order under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing

(b) The shipping order must also show opposite the entry of the article the color of label applied, or "No label required." For carload lots of such articles loaded by the shipper, the shipping order must show the kind of placard applied to the car, or "No placard required."

(c) The shipping order must also show the following certificate in the lower left-hand corner over the written or stamped facsimile signature of the shipper or of his duly authorized agent:

This is to certify that the above articles are properly described by name and are packed and marked and are

in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

(d) A shipping order that does not cover the shipment of an article classified as dangerous or doubtful by these regulations must not show thereon the label notation or the certificate prescribed for dangerous articles. Unnecessary certificates and label notations on shipping-order blanks must be canceled by the shipper.

(e) Whenever orders are placed in foreign countries for the importation of dangerous articles to be forwarded from port of entry by rail, the importer must furnish with the order to the foreign shipper and also to the forwarding agent at the port of entry, full and complete information as to the necessary packing, marking, and labeling required by these regulations. The forwarding agent must file with the originating carrier a certified shipment order and must see that the packages are properly packed, marked, and labeled.

#### WAYBILLING.

1873. The revenue or other waybill prepared from the shipping order and transfer, or any other billing delivered to connecting carrier for dangerous articles in list, paragraph 1807, and for other articles not in the list but properly offered for shipment as dangerous articles, must properly describe these articles by classification or tariff name and state for less-than-carload shipments the color of label applied. For carload shipments they must show the kind of placard applied, and when the lading is not dangerous but is properly described by one of the doubtful names, distinguished by an asterisk in the list, paragraph 1807, the billing for the car must be indorsed "No placard required." The shipper's certificate must be in possession of the initial carrier when these indorsements are made on original billing.

The revenue waybill for any dangerous article requiring red or yellow or white labels must also have plainly stamped or plainly written on the face and above the center line thereof, in letters not less than three-eighths of an inch high, the words "INFLAMMABLE" or "ACID."

#### PLACARDS AND HANDLING CARS.

1901. Carriers must keep on hand an adequate supply of placards. Placards will be furnished by carriers to shippers for attachment to cars loaded by them.

1902. (a) The carrier must verify the attachment of the

proper placard by the shipper as soon as a car requiring a placard is accepted by the carrier for transportation.

(b) Special care must be taken to avoid rough treatment and unnecessary switching of placarded cars.

(c) A daily record showing the initials and numbers of all loaded cars placarded must be kept on file at originating, transfer stations and interchange points.

1903. (a) When the lading requiring the placard is removed from cars, placards must be removed, except that "IN-FLAMMABLE" placards when offered for movement or as "empty" until such cars are known to have been properly cleaned with steam or reloaded with a substance that does not require the placard. As provided in paragraph 1941 (b) acid placards which are painted or stenciled on tank cars may be allowed to remain.

(b) Many fatal accidents have resulted from using lanterns or lighted matches to examine the interior of empty tank cars or in using hot rivets to repair unsteamed tank cars, which may contain inflammable vapors even when the previous lading was not of flash point below 80° F. Only incandescent electric lights should be used for this examination.

(c) Outlet valve caps and dome covers must be securely placed in proper position on empty tank cars requiring "IN-FLAMMABLE" placards when offered for movements or when transferred to or from connecting lines in interchange.

1904. A carrier must not move from a station, yard, or siding a car known to require placards until the proper placards are attached. Placards lost in transit must be replaced by the carrier.

1905. (a) Tank cars placarded "INFLAMMABLE" must be placed in trains, if possible, at least five cars from the engine and five cars from the caboose, but must not be placed next to a car placarded "EXPLOSIVES." When length of train does not permit this they must be placed as near the middle of the train as practicable, and in all cases carriers must see that their train crews are informed of the presence and location of such cars in the train.

(b) The carrier must see that its representative in charge of a train and a yard or terminal from which a freight train starts makes a thorough check and record of the cars bearing "INFLAMMABLE" or "ACID" and "EXPLOSIVES" placards with the billing to see that all placards required are attached; that those not required are removed;

and that placarded cars are properly placed in trains, as required by these regulations.

1906. When cars protected by "INFLAMMABLE" placards are received or held in yards, particularly at night, the carrier must see that all necessary precautions are taken to prevent accidents. These precautions must include provision for quickly removing and isolating them in case of fire. When such cars are held in yards for a period longer than 12 hours, they must be placed where they will be readily accessible for prompt removal in case of fire or explosion. A separate track or tracks, when available, must be designated at terminal classification or receiving yards for such cars, and cars must be coupled at all times during such holding. The carrier's representative in charge must be informed at all times of the presence and location of such cars placarded "INFLAMMABLE."

1907. In classification yards and in switching it must be determined by inspection and trial that such a car has its brakes in first class order before a draft containing it is cut, and a tank car placarded "INFLAMMABLE" must not be started down a ladder track, incline, or hump until the preceding car has cleared the ladder. It also must clear the ladder before another car is allowed to follow.

1908. (a) Cars bearing "INFLAMMABLE" placards and cars adjacent to them must be watched with extra care to discover hot journals.

(b) All available opportunities must be utilized by noting the odor of inflammable liquids or otherwise to discover leaks in these cars and to protect leaking cars from ignition of contents by flame of inspectors' lanterns or torches, by burning fusees, by switch lights, by switch-thawing flames, by fires on side of track, by coals from locomotives passing over a roadbed strewn with leakage, or otherwise. (See par. 1956.)

1909. Whenever a tank car loaded with an inflammable liquid is discovered in transit in a leaking condition all unnecessary movement of the car must cease until the unsafe condition of the car is remedied. Every possible precaution necessary to prevent ignition of the contents must be observed, and the general precautions indicated in paragraphs 1951 to 1957, inclusive, should be followed.

NOTE.—Tank cars containing inflammable liquids that are to be offered in interchange should be inspected on the track where transfer is assembled for delivery to receiving line. If a tank car is found in leaking condition, it must not be offered

in interchange. Where actual interchange to receiving line is distant from point of delivery by delivering line, and repair facilities are provided, if such a tank car develops a leak en route to the receiving line interchange track, the receiving line should accept the car, taking every possible precaution to prevent ignition of contents and handling the car as indicated in paragraphs 1909, 1951 to 1957.

1912. In unloading tank cars the following rules should be observed:

(a) The dome cover should be unscrewed by placing a bar between the dome-cover lug and the knob; the valve-rod handle in the dome should be moved back and forth a few times to ascertain if the valve is properly seated, and if seated, the valve cap should then be removed with a suitable wrench, having a pail to catch any liquid that may be in the valve nozzle.

(b) The unloading connection should be securely attached to the valve nozzle, and valve should then be raised by working the valve-rod handle. The dome cover should be placed over the dome opening, resting on a piece of wood, to allow air to enter the tank. The dome cover should not be replaced while unloading, as this action may result in collapse of the tank. After tank is unloaded the valve should be seated, valve cap and dome cover replaced. "INFLAMMABLE" placards must not be removed.

(c) When necessary to unload tank cars from the dome, or when necessary to transfer the contents of one tank car through the outlet valve into the dome of another tank car, care should be observed to see that all of the connections are tight and that the pipe or hose, when inserted into the open manhole for pumping or filling purposes, is surrounded by wet burlap to prevent the escape of vapors and to avoid igniting them.

(d) When the "blowing" of safety valves of a car containing inflammable liquids is noted, any available means for cooling the car shell and contents, such as spraying with water, should be utilized; and if practicable the car should be moved to an isolated point, to minimize the fire risk. Covering the safety valves with wet cloth, wet blankets, or wet gunny sacks will decrease the danger of igniting vapors escaping from a "blowing" valve. The burning of these vapors at the safety valve is not liable to cause an explosion. The valves are designed to permit, in emergencies, the burning in this way of the entire contents of the car.

### INFLAMMABLE PLACARD.

1913. A placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars, and on strong tag board for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring  $10\frac{3}{4}$  inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a box or stock car containing one or more packages protected by the *red* or the *yellow* diamond label, and to each side and end of a tank car containing an inflammable liquid:



Inflammable placard. (Reduced size.)

### IN CASE OF A WRECK.

1946. In case of a wreck involving a car containing inflammable freight it should be assumed that packages are broken and the leakage has occurred which may cause fire if lighted lanterns or other flames are taken into or near these cars. As much of the train as possible should be moved to a place of safety. A car containing inflammable freight should



be opened for ventilation and packages protected by red labels and cylinders of compressed gases should be removed to a safe place. Substances spilled from broken packages protected by yellow label should also be carefully removed. Cylinders of compressed gases may be exploded if they are exposed to fire or struck a sharp blow and the flying fragments would then be dangerous. Inflammable liquids spilled from broken packages or tank cars should be well covered with dry earth before a lighted lantern, torch, or an engine is used in the vicinity. Acids spilled in cars should be covered with dry earth and the car floor should be thoroughly swept.

#### LEAKING TANK CARS.

1951. Action in any particular case will depend upon existing conditions, and good judgment will be necessary to avoid disastrous fires on the one hand and the useless sacrifice of valuable property on the other.

Volatile (or combustible) liquids, such as gasoline, naphtha, etc., in large quantity and spread over a large surface will form vapors that will ignite at a considerable distance, depending on the kind and quantity of liquid and the direction and force of the wind. Many of the liquids, regarded as safe to carry under ordinary conditions and transported in tank cars without the inflammable placard, should still be treated as dangerous in handling a wreck.

1952. When oil cars are leaking all lights or fires near them that can possibly be dispensed with should be extinguished or removed. Incandescent electric lights or portable electric flash lights should be used when available. Whenever practicable the work of handling a wrecked oil car should be done during daylight.

1953. Lanterns necessarily used for signaling should be kept on the side from which the wind is blowing and at as high an elevation as can be obtained. The vapors will go with the wind but not against it. The ash pan and fire box of a locomotive or steam derrick, especially on the side of a wrecked or leaking tank car toward which the wind is blowing, is a source of danger. Wrecks involving oil cars should in no case be approached with lighted pipes, cigars, or cigarettes.

1954. Effort should be made to prevent the spread of oil over a large surface by collecting it in any available vessels or draining it into a hole or depression at a safe distance from the track. When necessary, trenches should be dug for this purpose.

It is not safe to drain inflammable oil in large quantities into a sewer, since vapors may thus be carried to distant points and there ignited. Care should be exercised also not to permit oil to drain into stream of water which may be used by irrigation plants or for watering stock. Dry earth spread over spilled oil will decrease the rate of evaporation and the danger. A stream of oil on the ground should be dammed and dry earth be thrown on the liquid as it collects.

1955. Sudden shocks or jars that might produce sparks or friction should be avoided. When possible, jack the wrecked cars carefully into position after removing other cars and freight that might be injured by fire. Only as a last resort, to meet an emergency, should a wrecked tank car be moved by dragging, and when this is done all persons should be kept at a safe distance.

1956. No unnecessary attempt should be made to transport a damaged tank car from which inflammable liquid is leaking. Safety in short movements may be secured by attaching a vessel under small leaks to prevent spread of inflammable liquid over tracks. Cover tracks at intervals in rear of a moving car with fresh earth to prevent fire overtaking the car. Keep engines away; also spectators who may be smoking. If wrecked or derailed, and not in a position to obstruct or endanger traffic, it should have its leak stopped as far as possible and be left under guard until another tank car or sufficient vessels can be provided for the transfer of the liquid, which should be transferred by pumping when practicable.

Even a tank that it not leaking is liable to be ruptured by use of slings, and the slipping of chain slings may produce sparks. Saving of the contents of the tank is not as important as the prevention of fire.

1957. An empty or partially empty tank car, with or without placards, is very liable to contain explosive gases, and lights must not be brought near it.

1958. *Water will not quench an oil fire.*—If the fire can not be smothered by use of earth, steam, or wet blankets, effort should be concentrated on confining it and saving other property.

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**Government's Exhibit 65.****G. P. L. CO. TELEGRAPH SERVICE.**

(rec'd Mar 24 1917 Wrote . . . . . Wired Mar 24 1917

Ans'd verb'y Mar 27 1917)

Order Naph

10 GF SP RS

Pittsburgh, Pa., Mar. 24, 1917.

Tryon, Port Arthur, Tex.

perpejaua (Please have) sleighbell (shipped to) drum-  
 right Okla. care Gypsy rabanna (loading rack) santafe deliv-  
 ery four cars zangenhorn (heavy naphtha) and follow with  
 four cars every wasemen (2 weeks)

Taber

2:08 pm

**Government's Exhibit 66.**

8 Monday, February 26, 1917. 9

Car	Kieffer	80.3	25+	1039
Car	Kieffer	78.3	25+	1036
Car	Kieffer	79.6	25+	1027
Car	Kieffer	78.1	25+	1042
Car	Kieffer	78.9	25+	1061
Car	Kieffer	78.9	25+	1029
Car	Kieffer	78.9	25+	1082
Car	Kieffer	78.9	25+	1136
Car	Kieffer	79.1	25+	1143
Car	Kieffer	79.1	25+	1243
Car	Kieffer	78.3	25+	1610
Car	Kieffer	78.6	25+	1616
Car	Kieffer	78.5	25+	a629
Car	Kieffer	78.6	25+	b629
Car	Kieffer	78.9	25+	c629
Car	Kieffer	79.9	25+	a627
Car	Kieffer	80.1	25+	b627
Car	Kieffer	79.9	25+	c627

10 11

Cars	Keiffer	75.9	25+	615a
Cars	Keiffer	75.7	25+	615b
Cars	Keiffer	75.3	25+	615c
Cars	Keiffer	78.6	25+	218
Cars	Keiffer	78.8	25+	2016
Cars	Keiffer	77.8	25+	332
Cars	Keiffer	79.3	25+	1064
Cars	Keiffer	79.5	25+	328
Cars	Keiffer	77.6	25+	1728

1272 GULF REFINING COMPANY, A CORPORATION, vs.

Cars	Keiffer	79.6	25+	1034
Cars	Keiffer	79.5	25+	1052
Cars	Keiffer	77.3	25+	1148
Cars	Keiffer	77.9	25+	1054
Cars	Keiffer	78.3	25+	410
Cars	Keiffer	80.7	25+	1112

12 Wednesday, February 28, 1917. 13

520	Navy Gasoline	64.0	25+	120-352
511	Gasoline	60.3	25+	128-383
805	Gasoline	63.1	25+	104-384
357	Gasoline	61.2	25+	136-368
829	Crude Naphtha	57.0		

14 15

Cars	Keiffer	76.5	25+	Car No. 1366
Cars	Keiffer	81.5	25+	Car No. 428
Cars	Keiffer	80.5	18+	Car No. 222
Cars	Keiffer	76.5	25+	Car No. 1113
Cars	Keiffer	80.7	25+	Car No. 956
Cars	Keiffer	77.6	25+	Car No. 1369
Cars	Keiffer	81.2	17+	Car No. 1718
Cars	Keiffer	77.3	25+	Car No. 1208
Cars	Keiffer	81.6	17	Car No. 422
Cars	Keiffer	76.7	25+	Car No. 427
Cars	Keiffer	77.9	25+	Car No. 229
Cars	Keiffer	77.1	25+	Car No. 1100

18 Friday, March 2, 1917. 19

Car	Kieffer	79.0	25+	934
Car	Kieffer	79.1	25+	1271
Car	Kieffer	78.8	25+	B620
Car	Kieffer	79.0	25+	1510
Car	Kieffer	78.8	25+	1156
Car	Kieffer	79.4	25+	1066
Car	Kieffer	80.7	25+	449
Car	Kieffer	78.6	18+	A620
Car	Kieffer	79.0	19+	C620

22 Monday, March 5, 1917. 23

Cars	Keiffer	3-4-17	80.2	25+	1207
Cars	Keiffer	A	80.0	25+	621
Cars	Keiffer	B	79.8	25+	621
Cars	Keiffer	C	79.7	25+	621

28	Wednesday, March 7, 1917.				29
520	Navy Gasoline	63.9	25+		131-363
511	Gasoline	60.2	25+		132-392
805	Gasoline	59.7	25+		
857	Gasoline	63.7	25+		128-357
829	Crude Naphtha	55.4			

30					31
Cars	Keiffer	80.3	25+		900
Cars	Keiffer	80.0	25+		1225
Cars	Keiffer	79.8	25+		1220
Cars	Keiffer	79.9	25+		2025
Cars	Keiffer	79.5	25+		1613
Cars	Keiffer	80.0	25+		1377
Cars	Keiffer	79.9	25+		1331
Cars	Keiffer	79.1	25+		1611
Cars	Keiffer	79.7	25+		168

34	Friday, March 9, 1917.						35
Cars	838	Ptrs. Nap.	7626	54.8	25+	Filt	960
Cars	838	Ptrs. Nap.	7626	54.8	25+	filt	1027
Cars	838	Ptrs. Nap.	7626	54.5	25+	filt	1502
Cars	838	Ptrs. Nap.	7626	54.5	25+	filt	1114
Cars	838	Ptrs. Nap.	7626	55.0	25+	filt	428
Cars	838	Ptrs. Nap.	7626	54.9	25+	filt	1083

36					37
Cars	Keiffer	79.8	25+		Car No. 916
Cars	Keiffer	78.8	25+		Car No. 911
Cars	Keiffer	79.7	25+		Car No. 1607
Cars	Keiffer	79.6	25+		Car No. 1610
Cars	Keiffer	79.6	25+		Car No. 1061
Cars	Keiffer	78.8	25+		Car No. 1209
Cars	Keiffer	79.0	25+		Car No. 913
Cars	Keiffer	79.5	25+		Car No. 1155
Cars	Keiffer	78.5	25+		Car No. 1065
Cars	Keiffer	80.0	25+		Car No. 1211
Cars	Keiffer	78.0	25+		Car No. 1035
Cars	Keiffer	79.1	25+		Car No. 1505
Cars	Keiffer	79.8	25+		Car No. 1042

44	Wednesday, March 14, 1917.				45
938	Ptrs. Nap.	7626	54.6	25+	1006
838	Ptrs. Nap.	7626	54.7	25+	1220

1274 GULF REFINING COMPANY, A CORPORATION, vs.

838	Ptrs. Nap.	7626	54.7	25+	1207
838	Ptrs. Nap.	7626	54.7	25+	335
838	Ptrs. Nap.	7626	54.8	25+	1135
838	Ptrs. Nap.	7626	55.1	25+	1333
838	Ptrs. Nap.	7626	55.1	25+	2024
838	Ptrs. Nap.	7626	51.1	25+	2028

54 Monday, March 19, 1917. 55

938	Ptrs. Nap.	7626	54.7	25+	2019
938	Ptrs. Nap.	7626	54.8	25+	408
838	Ptrs. Nap.	7626	54.8	25+	1041
838	Ptrs. Nap.	7626	54.6	25+	1156
838	Ptrs. Nap.	7626	55.1	25+	1620
938	Ptrs. Nap.	7626	55.0	25+	1002
838	Ptrs. Nap.	7626	55.1	25+	368
838	Ptrs. Nap.	7626	55.0	25+	1228

58 Wednesday, March 21, 1917. 59

Car	Keiffer	78.1	25+	428
Car	Keiffer	78.0	25+	1237
Car	Keiffer	78.3	25+	2012
Car	Keiffer	77.3	25+	1218
Car	Keiffer	77.9	25+	1074

64 Friday, March 23, 1917. 65

520	Navy Gasoline	63.3	25+	
511	Gasoline	61.4	25+	
805	Gasoline	62.7	25+	
857	Navy Gasoline	63.3	25+	
829	Crude Naphtha	54.8		

66				67
Car	Keiffer	80.0		1111
Car	Keiffer	78.8		328
Car	Keiffer	78.8		1064
Car	Keiffer	79.5		218
Car	Keiffer	80.2		1036
Car	Keiffer	78.7		18024
Car	Keiffer	78.9		1027
Car	Keiffer	80.5		2015
Car	Keiffer	76.6		1229
Car	Keiffer	78.3		1083
Car	Keiffer	79.8		426

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1275

Car	Keiffer	79.8	2025
Car	Keiffer	79.2	332
Car	Keiffer	79.6	1502

72 Monday, March 26, 1917. 73

838	Ptrs. Nap.	11348	54.7	25+	1209
838	Ptrs. Nap	11348	54.7	25+	1170
838	Ptrs. Nap.	11348	54.7	25+	1220
838	Ptrs. Nap	11348	54.7	25+	1225

78 Friday, March 30, 1917. 79

520	Navy Gasoline	63.3	25+	130-368
511	Gasoline	61.3	25+	120-378
805	Gasoline	62.4	25+	112-377
857	Navy Gasoline	63.3	25+	136-344
838	Painters Naphtha	54.7	25+	196-408
829	Crude Naphtha	53.8		
Cars	805 and 838 Gasoline	60.8	25+	1257

84 Monday, April 2, 1917. 85

838	Ptrs. Nap.	7626	54.7	25+	2028
838	Ptrs. Nap.	7626	54.9	25+	236
838	Ptrs. Nap.	7626	54.7	25+	911
838	Ptrs. Nap.	7626	54.7	25+	1112
838	Ptrs. Nap.	7626	54.7	25+	1015
838	Ptrs. Nap.	7626	54.7	25+	1049
838	Ptrs. Nap.	7626	54.7	25+	1272
838	Ptrs. Nap.	7626	54.7	25+	1319

84 85

Car	Keiffer	79.4	25+	410
Car	Keiffer	76.9	25+	2010
Car	Keiffer	78.0	25+	1620
Car	Keiffer	77.7	25+	a607
Car	Keiffer	79.4	25+	b607
Car	Keiffer	74.7	25+	c607
Car	Keiffer	79.1	25+	1277
Car	Keiffer	79.0	25+	1602
Car	Keiffer	78.1	25+	1612
Car	Keiffer	78.6	25+	1010
Car	Keiffer	79.1	25+	960
Car	Keiffer	78.9	25+	952
Car	Keiffer	79.1	25+	1002



1276 GULF REFINING COMPANY, A CORPORATION, vs.

Car	Keiffer	79.6	25+	1331
Car	Keiffer	77.8	25+	1011

88 Wednesday, April 4, 1917. 89

520	Navy Gasoline	63.3	25+	128-370
511	Gasoline	61.3	25+	120-371
805	Gasoline	63.1	25+	130-342
857	Navy Gasoline	63.6	25+	136-340
829	Crude Naphtha	54.3		

90 91

Car	Keiffer	78.2	25+	C622
Car	Keiffer	79.4	25+	1619
Car	Keiffer	79.0	25+	B629
Car	Keiffer	79.2	25+	934
Car	Keiffer	78.3	25+	1611
Car	Keiffer	77.8	25+	1034
Car	Keiffer	78.8	25+	1462
Car	Keiffer	76.6	25+	B622
Car	Keiffer	79.1	25+	2020
Car	Keiffer	79.4	25+	2012
Car	Keiffer	78.1	25+	1080
Car	Keiffer	78.9	25+	A622
Car	Keiffer	77.8	25+	1237
Car	Keiffer	78.9	25+	229
Car	Keiffer	77.6	25+	A629
Car	Keiffer	78.8	25+	C629
Car	Keiffer	78.4	25+	1074
Car	Keiffer	78.5	25+	924

100 Monday, April 9, 1917. 101

Cars	Keiffer	Off Color	80.1	+8 D D	1370
Cars	Keiffer	Off Color	80.0	20+	1321
Cars	Keiffer		79.0	25+	1113
Cars	Keiffer		79.5	25+	1368
Cars	Keiffer		78.1	25+	1378
Cars	Keiffer		73.1	25+	1271
Cars	Keiffer		73.2	25+	1384
Cars	Keiffer		73.0	25+	168
Cars	Keiffer		74.7	25+	1434
Cars	Keiffer		73.4	25+	416
Cars	Keiffer		71.8	25+	1206
Cars	Keiffer		75.1	25+	1229

112	Friday, April 13, 1917.				113
Cars	Keiffer	77.9	25+		1132
Cars	Keiffer	76.9	25+		445
Cars	Keiffer	77.9	25+		1111
Cars	Keiffer	77.9	25+		1277
Cars	Keiffer	78.4	25+		1616
Cars	Keiffer	79.0	25+		1621
Cars	Keiffer	78.1	25+		1032
Cars	Keiffer	78.0	25+		1143
Cars	Keiffer	76.8	25+		159

114	Monday, April 16, 1917.				115
				Over	Dry
520	Navy Gasoline	63.0	25+	133	355
511	Gasoline	59.8	25+	135	382
805	Gasoline	60.4	25+	133	375
857	Navy Gasoline	62.5	25+	140	350
838	Painters	54.7	25+	220	405

118					119
Cars 805-838	Gas.	a40018	60.3	25+	a620
Cars 805-838	Gas.	b40018	60.3	25+	b620
Cars 805-838	Gas.	c40018	60.3	25+	c620
Cars 838 Painters N		7626	55.0	25+	2024
Cars 838 Painters N		7626	54.8	25+	1331
Cars 838 Painters N		7626	55.1	25+	1029
(Cars 805-838 Re-Sample					)
(Gasoline		40004)	60.4	25+	1111)
(Cars 805-838 Re-Sample					)
(Gasoline		40003)	60.4	25+	1132)
Cars 838 Painters N		7626	54.8	25+	325
Cars 838 Painters N		7626	55.0	25+	332
Cars 838 Painters N		7626	54.8	25+	1206
Cars 838 Painters N		7626	55.1	25+	309
Cars 838 Painters N		7626	55.1	25+	1148

122	Wednesday, April 18, 1917.				123
Cars	Keiffer	74.5	25+	1945 1220 1946	1946
Cars	Keiffer	74.6	25+		1947
Cars	Keiffer	74.9	25+		1387
Cars	Keiffer	75.2	25+	1959	1960
Cars	Keiffer	75.5	25+		1956
Cars	Keiffer	75.7	25+		1957
Cars	Keiffer	75.6	25+	1985	958
Cars	Keiffer	76.0	25+		1965

132	Monday, April 23, 1917.				133
838	Ptrs. Nap.	7626	55.3	25+	960
838	Ptrs. Nap.	7626	55.3	25+	1113
838	Ptrs. Nap.	7626	55.3	25+	426
838	Ptrs. Nap.	11348	55.4	25+	1611
838	Ptrs. Nap.	11348	55.1	25+	1616
838	Ptrs. Nap.	11348	55.1	25+	1270
838	Ptrs. Nap.	11348	55.2	25+	1279

134					135
Cars	Kieffer	74.8	25+		1624
Cars	Kieffer	75.0	25+		1083
Cars	Kieffer	75.6	25+		1207
Cars	Kieffer	74.9	25+		1271
Cars	Kieffer	75.2	25+		1384
Cars	Kieffer	75.2	25+		305
Cars	Kieffer	75.3	25+		2012
Cars	Kieffer	75.5	25+		1237
Cars	Kieffer	75.1	25+		1502
Cars	Kieffer	75.4	25+		2010
Cars	Kieffer	74.5	25+		1066
Cars	Kieffer	74.0	25+		1437
Cars	Kieffer	74.5	25+		2016
Cars	Kieffer	74.1	25+		1609

138	Wednesday, April 25, 1917.				139
Car	Keiffer	78.3	21+	(Over)	1963
Car	Keiffer	78.2	21+	(@ 87)	1964
Car	Keiffer	75.0	25+	(Dry)	1205
Car	Keiffer	75.6	25+	(@ 353)	1355

140	Friday April 27, 1917.				141
520	Navy Gasoline	63.8	25+		137-342
511	Gasoline	60.0	25+		132-392
305	Gasoline	61.9	25+		122-380
857	Gasoline		25+		138-386
838	Painters Naphtha	55.0	25+		210-409
855	S. C. Gasoline	63.7	25+		135 4.3%
843	Painters Nap. Dist.	56.2	25+		190-430
829	Crude Naphtha	54.1			

142					143
Car	Keiffer	74.6	25+)		1142
Car	Keiffer	75.2	25+)		1026

Car	Keiffer	74.5	25÷)		1462
Car	Keiffer	74.4	25+)		2022
Car	Keiffer	75.1	25+)		332
Car	Keiffer	74.4	25+)		1029
Car	Keiffer	74.9	25+)	Over at 90	1011
Car	Keiffer	77.7	19+)	Dry at 350	1962
Car	Keiffer	79.1	19+)		1966
Car	Keiffer	77.8	17+)		1961
Car	Keiffer	78.8	19+)		1967
Car	Keiffer	74.7	22+)		1010
Car	Keiffer	78.8	18+)		1968
Car	Keiffer	79.3	18+)		1178

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146	Monday, April 30, 1917.				147
520	Navy Gasoline	63.8	25+		130-342
511	Gasoline	59.0	25+		140-396
805	Gasoline	67.0	25+		103-378
857	Gasoline	60.6	25+		137-385

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148					149
Cars	Keiffer	75.4	25+		1950
Cars	Keiffer	75.8	25+		1949
Cars	Keiffer	74.8	25+		1331
Cars	Keiffer	76.0	25+		1952
Cars	Keiffer	74.2	25+		2024
Cars	Keiffer	75.6	25+		1034
Cars	Keiffer	75.8	25+		1954
Cars	Keiffer	74.3	25+		309
Cars	Keiffer	75.3	25+		1951
Cars	Keiffer	75.4	25+		2025
Cars	Keiffer	76.2	25+		1953
Cars	Keiffer	74.8	25+		1148
Cars	Keiffer	75.6	25+		1247

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150					151
838	Ptrs. Nap.	7626	55.0	25+	1006
838	Ptrs. Nap.	7626	55.2	25+	2024
838	Ptrs. Nap.	7626	54.9	25+	1148
838	Ptrs. Nap.	7626	55.2	25+	1209
838	Ptrs. Nap.	7626	55.0	25+	1178
838	Ptrs. Nap.	7626	55.0	25+	2022
838	Ptrs. Nap.	7626	55.2	25+	1331
838	Ptrs. Nap.	7626	55.1	25+	1247

1280 GULF REFINING COMPANY, A CORPORATION, vs.

162	Monday, May 7, 1917.			163
520	Navy Gasoline	63.9	25+	130-340
511	Gasoline	60.6	25+	136-390
805	Gasoline	62.0	25+	110-385
857	Gasoline	60.4	25+	138-380
829	Crude Naphtha	60.6		

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164				165
Car	Keiffer	77.4	25+	449
Car	Keiffer	77.8	25+	1609
Car	Keiffer	76.1	25+	335
Car	Keiffer	77.3	25+	985
Car	Keiffer	77.4	25+	1956
Car	Keiffer	80.0	20+	434
Car	Keiffer	77.3	25+	328
Car	Keiffer	77.3	25+	1327
Car	Keiffer	78.2	25+	1153
Car	Keiffer	80.2	19+	1229

164					165
838	Ptrs. Nap.	11348	54.9	25+	1355
838	Ptrs. Nap.	11348	55.0	25+	1132
838	Ptrs. Nap.	11348	55.0	25+	1080
838	Ptrs. Nap.	11348	55.0	25+	368

170	Wednesday, May 9, 1917.					171
838	Ptrs. Nap.	11348	55.0	25+	1068	
838	Ptrs. Nap.	11348	55.0	25+	1278	
838	Ptrs. Nap.	11348	55.4	25+	1015	

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170				171
Car	Keiffer	78.1	25+	1251
Car	Keiffer	73.1	25+	1611
Car	Keiffer	73.7	25+	1144-1964
Car	Keiffer	73.8	25+	1616-2010
Car	Keiffer	74.1	25+	1963
Car	Keiffer	77.6	25+	1969
Car	Keiffer	73.2	25+	1270-1279
Car	Keiffer	74.4	25+	1066
Car	Keiffer	74.0	25+	1207-1205
Car	Keiffer	74.0	+19	1624

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176	Friday, May 11, 1917.					177
838	Ptrs. Nap.	7626	54.7	25+	OK	1321
838	Ptrs. Nap.	7626	54.7	25+	OK	1602
838	Ptrs. Nap.	7626	54.8	25+	OK	408
838	Ptrs. Nap.	7626	54.9	25+	OK	960

176						177
Car	Keiffer		77.1			1331
Car	Keiffer		77.0			956
Car	Keiffer		76.9			1366
Car	Keiffer		76.7			2024
Car	Keiffer		77.0			1209
Car	Keiffer		76.7			1148
Car	Keiffer		77.0			2022
Car	Keiffer		77.2			1006

178	Monday, May 14, 1917.					179
					Over Dry	
520	Navy Gasoline	63.1	25+		135	353
511	Gasoline	60.8	25+		135	376
805	Gasoline	61.8	25+		115	388
857	Gasoline	70.2	25+		110	385
829	Crude Naphtha	54.8				

180						181
838	Painters Naphtha	7626	25+	54.9		1969
838	Painters Naphtha	7626	25+	54.7		1957
838	Painters Naphtha	7626	25+	54.9		1957
838	Painters Naphtha	7626	25+	54.9		1961
838	Painters Naphtha	7626	25+	54.6		1963
838	Painters Naphtha	7626	25+	54.9		1966
805-838	Gasoline	40490	25+	60.4		428
805-838	Gasoline	40363	25+	60.4		1064
805-838	Gasoline	40529	25+	60.3		1066
805-838	Gasoline	40428	25+	60.2		1082
805-838	Gasoline	40494	25+	60.4		1178
805-838	Gasoline	40406	25+	60.1		1113

184	Wednesday, May 16, 1917.					185
Car	Keiffer	75.7	25+			1948
Car	Keiffer	73.2	25+			1946
Car	Keiffer	75.1	25+			1953
Car	Keiffer	73.8	25+			1965
Car	Keiffer	74.7	25+			1954

1282 GULF REFINING COMPANY, A CORPORATION, vs.

Car	Keiffer	75.3	25+	1245
Car	Keiffer	76.1	25+	1951
Car	Keiffer	73.0	25+	1968
Car	Keiffer	75.6	25+	1950
Car	Keiffer	74.6	25+	1952
Car	Keiffer	75.2	25+	1949
Car	Keiffer	75.8	25+	1247
Car	Keiffer	76.2	25+	1945

192	Monday, May 21, 1917.			193
Car	Keiffer	75.4	25+	1384
Car	Keiffer	75.9	25+	1956
Car	Keiffer	74.4	25+	1385
Car	Keiffer	75.1	25+	335
Car	Keiffer	74.9	25+	1947
Car	Keiffer	75.2	25+	1387
Car	Keiffer	74.9	25+	1609
Car	Keiffer	74.4	25+	1958
Car	Keiffer	74.8	25+	434
Car	Keiffer	75.2	25+	408
Car	Keiffer	74.6	25+	332
Car	Keiffer	75.0	25+	960
Car	Keiffer	75.0	25+	1602
Car	Keiffer	75.2	25+	1038

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194					195
Cars	Ptrs. Nap.	11348	55.0	25+	1247
Cars	Ptrs. Nap.	11348	55.0	25+	1271
Cars	Ptrs. Nap.	11348	55.0	25+	1205
Cars	Ptrs. Nap.	11348	55.0	25+	1255

198	Tuesday, May 22, 1917.						199
Cars	838	Ptrs. Nap.	7626	55.0	25+	1958	
Cars	838	Ptrs. Nap.	7626	55.0	25+	1956	
Cars	838	Ptrs. Nap.	7626	55.2	25+	408	
Cars	838	Ptrs. Nap.	7626	55.2	25+	1954	
Cars	838	Ptrs. Nap.	7626	55.1	25+	1602	
Cars	838	Ptrs. Nap.	7626	55.2	25+	1947	

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202	Wednesday, May 23, 1917.				203
Car	Keiffer	75.7	25+	1229)	
Car	Keiffer	76.0	25+	1955)	
Car	Keiffer	75.6	25+	1961)	Over



Car	Keiffer	76.6	25+	1957)	@ 88
Car	Keiffer	75.7	25+	1969)	Dry
Car	Keiffer	75.7	25+	1966)	@ 358
Car	Keiffer	74.2	23+	1963)	

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206	Friday, May 25, 1917.				207
Car	Keiffer	75.8	25+		2014
Car	Keiffer	76.2	25+		1225
Car	Keiffer	75.8	25+		1967
Car	Keiffer	74.6	25+		1174
Car	Keiffer	75.8	25+		1977
Car	Keiffer	75.4	25+		1975
Car	Keiffer	74.9	25+		445
Car	Keiffer	75.8	25+		1962
Car	Keiffer	75.9	25+		392
Car	Keiffer	75.7	25+		924

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212	Monday, May 28, 1917.				213
Cars	Keiffer	75.1	25+		1978
Cars	Kieffer	76.0	25+		1953
Cars	Kieffer	74.9	25+		1369
Cars	Kieffer	75.5	25+		1945
Cars	Kieffer	75.9	25+		1954
Cars	Kieffer	74.5	25+		1968
Cars	Kieffer	75.7	25+		1965
Cars	Kieffer	75.7	25+		1616
Cars	Kieffer	76.0	25+		1946
Cars	Kieffer	75.7	25+		1982
Cars	Kieffer	75.1	25+		2006
Cars	Kieffer	75.9	25+		1948
Cars	Kieffer	75.5	25+		2024

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226	Monday, June 4, 1917.				227
Car	Keiffer	70.7	18+	1611)	
Car	Keiffer	75.3	25+	1351)	
Car	Keiffer	74.0	25+	1983)	
Car	Keiffer	74.7	25+	1850)	Over
Car	Keiffer	74.7	25+	1858)	@ 92
Car	Keiffer	74.0	25+	1856)	Dry
Car	Keiffer	74.7	25+	1037)	@ 364
Car	Keiffer	74.5	25+	1851)	
Car	Keiffer	74.7	25+	1854)	
Car	Keiffer	75.1	25+	1852)	

1284 GULF REFINING COMPANY, A CORPORATION, vs.

Car	Keiffer	75.6	25+	1727)
Car	Keiffer	74.0	25+	1853)

228	Wednesday, June 6, 1917.			229
520	Navy Gasoline	61.8	25+	136-360
511	Gasoline	61.0	25+	130-320
305	Gasoline	63.7	25+	109-384
357	Gasoline	61.0	25+	126-372

230				231
Car	Keiffer	72.6	25+	1969
Car	Keiffer	74.7	25+	1857
Car	Keiffer	75.9	25+	1956
Car	Keiffer	73.6	25+	1271
Car	Keiffer	75.7	25+	1799
Car	Keiffer	74.9	25+	1768
Car	Keiffer	75.1	25+	1064
Car	Keiffer	74.5	25+	1961
Car	Keiffer	72.9	25+	1205
Car	Keiffer	74.3	25+	1974
Car	Keiffer	75.3	25+	1963
Car	Keiffer	72.3	25+	1247
Car	Keiffer	72.0	25+	1245

Car	Keiffer	75.1	25+	1967
Car	Keiffer	75.3	25+	1227
Car	Keiffer	75.3	25+	1976
Car	Keiffer	72.8	17+	900
Car	Keiffer	74.9	17+	1011
Car	Keiffer	71.5	18+	2016
Car	Keiffer	75.4	25+	1971
Car	Keiffer	75.0	25+	1977
Car	Keiffer	75.2	25+	1973
Car	Keiffer	75.2	25+	1975
Car	Keiffer	75.0	25+	1964
Car	Keiffer	75.4	25+	1962

236	Friday, June 8, 1917.			237
Car	Keiffer	72.7	25+	1740
Car	Keiffer	72.8	25+	2025
Car	Keiffer	74.6	25+	1953
Car	Keiffer	72.0	25+	1968
Car	Keiffer	75.1	25+	1978
Car	Keiffer	72.1	25+	1786

Car	Keiffer	73.9	25+	428
Car	Keiffer	73.9	25+	1948
Car	Keiffer	73.8	25+	1979
Car	Keiffer	73.0	25+	1965
Car	Keiffer	72.9	25+	1982
Car	Keiffer	74.7	25+	1954
Car	Keiffer	74.6	25+	1083

242

Monday, June 11, 1917.

243

805-838	Gasoline	40928	61.0	25+	1616
805-838	Gasoline	40883	60.6	25+	1780
805-838	Gasoline	40929	61.0	25+	1774
805-838	Gasoline	40852	60.9	25+	1066
805-838	Gasoline	40838	60.7	25+	1245
805-838	Gasoline	40811	61.0	25+	426
805-838	Gasoline	40856	61.0	25+	1788
805-838	Gasoline	40915	60.7	25+	1333
805-838	Gasoline	40911	61.0	25+	1366
838	Ptrs. Nap.	7626	54.9	25+	1955
838	Ptrs. Nap.	7626	55.1	25+	1855
838	Ptrs. Nap.	7626	55.0	25+	2016
838	Ptrs. Nap.	7626	55.1	25+	1732
838	Ptrs. Nap.	7626	54.9	25+	1963
838	Ptrs. Nap.	7626	54.7	25+	1957

256

Monday, June 18, 1917.

257

520	Navy Gasoline	61.8	25+	135-356
511	Gasoline	60.2	25+	130-400
805	Gasoline	62.7	25+	118-376
857	MT			
829	Crude Naphtha	54.2		

258

259

Car	Unrefined Naphtha	73.5	25+	1858
Car	Unrefined Naphtha	73.8	25+	1624
Car	Unrefined Naphtha	74.1	25+	1201
Car	Unrefined Naphtha	74.2	25+	1950
Car	Unrefined Naphtha	74.0	25+	1225
Car	Unrefined Naphtha	73.4	25+	1727
Car	Unrefined Naphtha	73.5	25+	1852
Car	Unrefined Naphtha	73.9	25+	1951
Car	Unrefined Naphtha	73.5	24+	1856
Car	Unrefined Naphtha	75.4	25+	1854
Car	Unrefined Naphtha	77.5	20+	1853
Car	Unrefined Naphtha	76.3	25+	1850

1286 GULF REFINING COMPANY, A CORPORATION, vs.

262 Wednesday, June 20, 1917. 263

520	Navy Gasoline	61.9	25+	133	357
511	Gasoline	58.2	25+	132	396
805	Gasoline	61.1	25+	124	397
838	Painters Naphtha	54.2	25+	200	420

264 265

805-838	Gasoline	40996	58.0	25+ OK	1971
805-838	Gasoline	41047	58.0	25+ OK	O.K. 1977
838	Ptrs. Nap.	11348	54.8	22+ OK)	By 1065
				) EBP	
838	Ptrs. Nap.	11348	54.2	22+ OK)	1946 1947
838	Ptrs. Nap.	11348	54.2	22+ OK	EBP 1066

270 Friday, June 22, 1917. 271

838	Ptrs. Nap.	7626	54.0	25+	1351
838	Ptrs. Nap.	7626	54.0	25+	1331
838	Ptrs. Nap.	7626	53.8	25+	1740
838	Ptrs. Nap.	7626	53.9	25+	1786
838	Ptrs. Nap.	7626	53.9	25+	1857
838	Ptrs. Nap.	7626	54.0	25+	1983

272 Monday, June 25, 1917. 273

520	Navy Gasoline	61.6	25+	140	357
511	Gasoline	58.5	25+	OK	135 397
805	Gasoline	58.5	25+	OK	128 396
857	Gasoline	58.9	25+	OK	140 402

274 275

805-296	P. M. Gasoline	40511	57.5	25+	1064
805-206	P. M. Gasoline	40969	57.3	25+	1268
805-206	P. M. Gasoline	40792	57.1	25+	A B C 621
805-206	P. M. Gasoline	40791	57.0	25+	A B C 622
206	Painters Nap.	11348	52.9	25+	1209
206	Painters Nap.	11348	52.6	25+	1026
206	Painters Nap.	11348	52.8	25+	1871
206	Painters Nap.	11348	52.7	25+	1080
206	Painters Nap.	11348	52.7	25+	437
206	Painters Nap.	11348	52.7	25+	2029

278 Wednesday, June 27, 1917. 279

520	Navy Gasoline	61.8	25+ O.K.	144-355
511	Gasoline	58.5	25+ O.K.	130-392

805	Gasoline		61.4	25+	120-392
857	Gasoline		60.6	25+	140-381
838	Painters Naphtha		52.7	25+ O.K.	214-434
829	Crude Naphtha		55.2		
838-805	Painters Naphtha	7626	53.3	25+	1978
838-805	Painters Naphtha	7626	53.6	25+	1952
838-805	Painters Naphtha	7626	53.7	25+	1612-1227
838-805	Painters Naphtha	7626	53.2	24+	2024
838-805	Painters Naphtha	7626	52.8	25+	1969

280					281
Car	Unrefined Naphtha	77.5	25		1232
Car	Unrefined Naphtha	77.5	25+		1974

288	Monday, July 2, 1917.				289
Cars	Ptrs. Nap.	7626	54.5	25+	1251
Cars	Ptrs. Nap.	7626	54.5	25+	2014
Cars	Ptrs. Nap.	11348	54.7	25+	1747
Cars	Ptrs. Nap.	11348	54.7	25+	1788
Cars	Ptrs. Nap.	7626	54.2	25+	1731
Cars	Ptrs. Nap.	11348	54.7	25+	1331
Cars	Ptrs. Nap.	7626	54.4	25+	1738
Cars	Ptrs. Nap.	7626	54.2	25+	1710
Cars	Ptrs. Nap.	11348	54.5	25+	1387

304	Monday, July 9, 1917.				305
Cars	838	Ptrs. Nap.	7626	54.1 +25	1980
Cars	838	Ptrs. Nap.	7626	54.3 22+	1946
Cars	838	Ptrs. Nap.	7626	54.0 22+	1853
Cars	838	Ptrs. Nap.	7626	54.5 24+	1947
Cars	838	Ptrs. Nap.	7626	54.1 23+	1852
Cars	838	Ptrs. Nap.	7626	54.1 23+	1855

306	Wednesday, July 11, 1917.				307
520	Navy Gasoline	61.8	25+		128-356
511	Gasoline	59.8	25+		131-403
805	Gasoline	61.7	25+		108-385
857	Gasoline	M T			M T
838	Painters	54.2	25+		208-406
Cars 805	Gasoline	41512	57.8	23+ (Mr. F. says)	1612
Cars 838	Gasoline	41463	59.9	23+ (Mr. GLP ad- (vised to ship)	1227

308					309
Car	Unrefined Naphtha	76.0	+18		1270

1288 GULF REFINING COMPANY, A CORPORATION, vs.

328 Friday, July 20, 1917. 329

520		61.7	25+	
511		58.5	25+	
805		61.5	25+	
857		MT		MT

330 331

Cars	Unrefined Naphtha	77.0	25+	1957
Cars	Unrefined Naphtha	76.6	25+	1982

334 Monday, July 23, 1917. 335

520	Navy Gasoline	61.7	25+	
511	Gasoline	58.3	25+	
805	Gasoline	63.6	25+	
857	Gasoline	MT		
838	Ptrs. Nap.	54.9	25+	

336 337

838	Painters Nap.	7626	53.8	25+	1068
838	Painters Nap.	7626	53.8	25+	1855
838	Painters Nap.	7626	53.9	25+	1852
838	Painters Nap.	7626	53.8	25+	1767
838	Painters Nap.	7626	53.9	25+	1731
Car	Unrefined Nap.		74.4	25+	410
805-838	Gas	41740	58.6	25+	1850
805-838	Gas	41470	58.6	25+	1708
805-838	Gas	41687	58.7	25+	1859
805-838	Gas	41686	58.6	25+	1968
905-838	Gas	41661	58.6	25+	960
805-838	Gas	41341	58.6	25+	1376
805-838	Gas	41704	58.5	25+	1616
805-838	Gas	41703	58.5	25+	1763
805-838	Gas	41683	58.7	25+	1079
805-838	Gas	41540	58.6	25+	1451

340 Wednesday, July 25, 1917. 341

520	Navy Gasoline	61.6	25+	133-358
511	Gasoline	59.3	25+	163-393
805	Gasoline	61.6	25+	111-372
329	Crude Naphtha	54.0		
838	Painters Naphtha	54.4	25+	206-412
805-838	Gasoline 41300	60.4	25+	1971
805-838	Gasoline 41301	60.1	25+	1854
805-838	Gasoline 41299	60.4	25+	1978
805-838	Gasoline 41302	60.2	25+	1947

342				343
Car	Unrefined Naphtha	74.2	25+	1947

344	Friday, July 27, 1917.			345
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520	Navy Gasoline	61.7	25+	138-353
511	Gasoline	59.1	25+	141-393
805	Gasoline	62.2	25+	122-377
857	Gasoline	MT		MT
838	Painters Naphtha	54.6	25+	201-414
829	Crude Naphtha	54.1		
805-838	Gasoline 41571	58.5	25+	1710
805-838	Gasoline 41770	58.5	25+	1954
838	Painters Naphtha 7526	54.7	25+	1951
838	Painters Naphtha 7626	54.6	25+	956
838	Painters Naphtha 7626	54.6	25+	1984
838	Painters Naphtha 7626	54.6	25+	1857
838	Painters Naphtha 7626	54.7	25+	1970
838	Painters Naphtha 7626	54.7	25+	1850

346				347
Cars	Unrefined Naphtha	76.2	18+	1959
Cars	Unrefined Naphtha	76.0	18+	1956

350	Monday, July 30, 1917.			351
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520	Navy Gasoline	61.6	25+	133	352
511	Gasoline	58.9	25+	141	396
805	Gasoline	62.2	25+	121	376
838	Painters Naphtha	54.2	25+	191	407

352					353
805-838	Gasoline	41848	58.0	25+	1969
805-838	Gasoline	41848	58.0	25+	1768
838	Ptrs. Nap.	7626	54.1	23+ OK EBP	1706
	Ptrs. Nap.	7626	54.1	25+	1780
	Ptrs. Nap.	7626	54.1	25+	1451
	Ptrs. Nap.	7626	54.2	25+	1708
	Ptrs. Nap.	7626	54.5	25+	1738
	Ptrs. Nap.	7626	54.1	25+	1701
	Ptrs. Nap.	11348	54.1	25+	1071
	Ptrs. Nap.	11348	54.1	25+	1079
	Ptrs. Nap.	11348	54.0	25+	1178
	Ptrs. Nap.	11348	54.1	25+	1337
	Ptrs. Nap.	11348	54.1	25+	1763
	Ptrs. Nap.	11348	54.0	25+	1428



**Government's Exhibit 68.**

GULF REFINING COMPANY

G. R. Nutty, Vice President

Frick Building Annex

Pittsburgh, Pa.

Cable Address "GULFOIL"

W. U. and A. B. C. Code

4th & 5th Editions

Chas. B. Ellis, Traffic Manager

Petroleum  
and Its Products

June 2nd, 1914.

File 7-Kiefer.

Mr. W. P. Donovan, Sup't, Gypsy Oil Co., Kiefer, Okla.

Dear Sir: Upon receipt of this letter, will you kindly change routing on the gasoline from Kiefer to Port Arthur so that it will route:

Frisco H. & T. C. T. & NO.

until further instructions.

Yours truly,

(Signed) C. B. Ellis

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**Government's Exhibit 69.**

File F-1

Dec. 29, 1915.

Mr. W. P. Donovan, Supt. Gypsy Oil Co., Kiefer, Okla.

Dear Sir: Your letter Dec. 23rd, enclosing letter from Mr. Donohue, Agent, Frisco, with reference to routing of shipments for Port Arthur, for the present until further advise, via Frisco to Ashdown, KCS beyond. In checking up I find the time is practically the same via both routes, and as both the KCS and S. P. reach our refinery at Port Arthur, it is our intention to divide this business, and when it is equalized I will advise you when to begin routing Frisco S. P.

Yours truly,

CC—Mr. W. A. Looney

(Signed) C. B. Ellis

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**Government's Exhibit 71.**

GULF REFINING COMPANY

G. R. Nutty, Vice President

Frick Building Annex

Pittsburgh, Pa.

Cable Address  
"GULFOIL"

W. U. and A. B. C. Code  
4th & 5th Editions

Sales Department

Petroleum  
and Its Products

April 25th, 1916.

File F-1

Chas. B. Ellis, Traffic Manager

Mr. W. P. Donovan,

Supt., Gypsy Oil Company, Kiefer, Okla.

Dear Sir: Please refer to my letter of December 29th, File F-1, requesting that all shipments for Port Arthur be routed via Frisco to Ashdown—K. C. S. beyond until further orders.

This business has not yet been equalized. I would be glad to have you arrange to route two-thirds of the business via Frisco to Ashdown—K. C. S. beyond, and one-third by Frisco to Sherman—H. & T. C. to West Port Arthur. This to be continued until we have equalized the business between the two lines as it is our desire to give the Southern Pacific and Kansas City Southern an equal share of this business, both of which reach our refinery at Port Arthur.

Yours truly,

(Signed) C. B. Ellis.

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#### Government's Exhibit 74.

Uniform Bill of Lading—Standard form of Straight Bill of Lading approved by the Interstate Commerce Commission by Order No. 787 of June 27, 1908.

St. Louis—San Francisco Railway Company

Straight Bill of Lading—Original—Not Negotiable—Shippers No. K-502 Agents No. . .

Received, subject to the classifications and tariffs in effect on the date of issue of this Original Bill of Lading, at Kiefer, Oklahoma, August 8th, 1917, from Gypsy Oil Co.—Gasoline Department, the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed

hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The Rate of Freight from ..... to ..... is in Cents per 100 lbs. If Times 1st.... If 1st Class.... If 2nd class .... If Rule 25 .... If 3rd Class.... If Rule 26.... If Rule 28.... If 4th Class.... If 5th Class.... If 6th Class .... If Special per.... If Special per .... (Mail Address --Not for purposes of Delivery.)

Consigned to Gulf Refining Co., Destination, Pittsburgh, Shadyside Station, State of Pa. County of .... Route, Frisco to East St. Louis Ill. TSTL&W to Delphos Ohio, PRR to dest'n. Car Initial .... Car No. ....

No. Packages, 1 GRCX; Description of Articles and Special Marks, Tank car 1934, gasoline 8046 8046; Weight (Subject to Correction) 53103; Class or Check, Rate., Column ..

If charges are to be prepaid, write or stamp here, "To be Prepaid." ..... Received \$.. to apply in prepayment of the charges on the property described hereon. .... Agent or Cashier. Per ..... (The signature here acknowledges only the amount prepaid.) Charges Advanced: \$....

Certain rates are based on value of articles shipped. Where Classifications or Commodity Tariffs provide rates based on value, the value must be stated in space provided below and must be signed by shipper, or his agent (this signature being in addition to the signature in space provided in lower left hand corner of Bill of Lading).

Shipper hereby declares the value of property herein described to be ..... Shipper. Per .....

Gypsy Oil Co.—Gasoline Department. Shipper. Per W. Millard H. F. Bakkett, Agent Per OAR

(This Bill of Lading is to be signed by the shipper and agent of the carrier issuing same.)

(Rubber stamp) This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

Gypsy Oil Co.—Gasoline Dept. Shippers Per W. Millard Supt. H

Inflammable Placard applied and Dome Cover Caution Card.

**Government's Exhibit 75.**

(The A. T. & S. F. Ry. General Feb 10 '17 Agent  
Tulsa, Okla.)

**GYPSY OIL COMPANY**

Gasoline Department

W. P. Donovan, General Superintendent

Tulsa, Okla., February 9th, 1917.

Mr. P. T. McKirahan, General Agent,

A. T. & S. F. Railway Company, Tulsa, Oklahoma.

Dear Sir: In further reference to the gasoline loading rack track we intended to have constructed on your line at Drumright, Oklahoma, I now understand that your company will not permit the placing of gasoline loading racks within 400 feet of your main line. The Bureau of Explosives recommend loading racks be placed at least 100 feet from the main line, and I consider that distance ample under all ordinary conditions, and our Drumright loading rack track would not be an exception.

It seems to me that rules and regulations governing the shipment and handling of gasoline are laid down by railroads, and others, without giving the matter involved due consideration. I understand there are certain things permitted by the railroads in handling gasoline that reputable gasoline shippers would consider extremely dangerous, and on the other hand certain methods are used by gasoline shippers where the fire risk is considered by them very small and the railroads consider the risk extremely hazardous. A tank car of gasoline on fire 100 feet away from the main line would not likely endanger moving cars on that line. When gasoline is once ignited it is the easiest kind of an oil fire to control, as it is rarely ever leaves the container which holds it, whereas, a tank of crude oil on fire would boil over and probably spread the fire a great distance.

Would it not be possible for representatives of your company to meet with the Executive Committee of the Casinghead Gasoline Producers Association of America at a meeting to be held by them at Tulsa, Oklahoma, at 2 o'clock Friday afternoon, February 16th, 1917, to discuss the shipping of casinghead gasoline from all angles. I feel that nearly all of the gasoline shippers want to work in harmony with the railroads and do their part toward carrying the standard of safety to the highest point, but to ask them to build loading racks 400 feet away from a main line would be, in most cases, a physical impossibility, and in no instance, unless in a congested dis-

trict, would it add anything to the safety of the railroad company.

Very truly yours,

Gypsy Oil Company—Gasoline Dep't,

D-M

(Signed) W. P. Donovan, Gen'l Sup't.

Cy. A. J. Pfister. 811 South Boulder.

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**Government's Exhibit 76.**

File 12-29

Tulsa, November 10th, 1916.

Drumright, Okla: Proposed Spur for Gypsy Oil Company:  
Mr. J. R. Koontz,

General Freight Agent, Topeka, Kansas.

Dear Sir: Further replying to your letter, File R-2646, November 7th, above subject.

I have succeeded in getting a very conservative estimate from the Gypsy Oil Company, Gasoline Department, on the business which this new gasoline plant at Drumright will bring us.

They estimate that there will be shipped forty carloads of gasoline, per month, which will go to their refinery at Port Arthur, Texas. Inbound they estimate thirteen or fourteen carloads of naptha, per month, which will come from Port Arthur. These cars will average about 65,000 pounds to the car. I do not have the tariff showing the freight rate, but presume you have same in your office.

There has, or will be, about seven cars of cement and twenty-eight cars of stone from Dewey, and fourteen carloads of sand from Tulsa. This business would move intra-state, and we would only secure the haul from Jennings.

There will be four carloads of compressors from Painted Post, New York, and five carloads of gas engines from Grove City, Pennsylvania. There will also be twenty-one carloads of steel tanks, set-up, which will be shipped from Kansas City.

These people are very anxious to get this track constructed without any unnecessary delay, and would appreciate it very much if you will expedite the handling, and urge our operating officials to hurry to conclusion.

Yours truly,

(Signed) P. T. McKirahan

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**Government's Exhibit 77.**

220	Wednesday, December 6, 1916.			221
Cars	Keiffer	77.2	25+	1612
Cars	Keiffer	78.8	25+	1225
Cars	Keiffer	69.3	+16	368
Cars	Keiffer	66.1	+16	915
Cars	Keiffer	77.4	25+	1327
Cars	Keiffer	66.2	+15	1110

226	Friday, December 8, 1916.			227
Cars	Keiffer	77.6	25+	2012
Cars	Keiffer	77.4	25+	1114
Cars	Keiffer	78.1	25+	1250
Cars	Keiffer	77.3	25+	1395
Cars	Keiffer	77.8	25+	1201

228	Monday, December 11th, 1916.			229
511	Gasoline	60.7	25+	134-383
520	Gasoline	60.6		136-385
806	Gasoline	65.6	25+	105-378
857	Gasoline	60.8	25+	133-376
847	B. Solar	51.0	-21	
830	Gasoline Dist.	62.4	25+	132-346
856	Gasoline Dist.	61.7	25+	143-389
848	Gasoline Dist.	60.8	25+	134-378
855	Gasoline Dist.	63.7	25+	129-346
844	Painters Naptha	55.2	25+	238-407
849	Painters Naptha	55.0	25+	206-392
850	Painters Naptha	55.0	25+	228-410
838	Painters Naptha Dist.	54.8	25+	217-403
806	Heavy Crude Naptha	Mt	Mt	
813	Crude Naptha	57.7		
829	Crude Naptha	58.0		
883	Special Kerosene	50.9	80a 25+	
884	Special Kerosene	50.9	78a 25+	
801	100 Elliott	45.3	108 Ell -22	
860	Lusterlite	45.8	102a 21+	
842	Radium	45.1	130 TOC 22+	
85	Sunburst	45.9	103a 19+	
802	Sunburst	45.7	104a 18+	
803	Sunburst Dist.	46.6	86a	
808	Radium Dist.	44.6	134 TOC	
882	100 Elliott Dist.	45.7	107 Ell	
807	Sunburst S S Stock	48.3		
84	Lusterlite S S Stock	47.7		
804	Lusterlite S S Stock	47.6		
859	Lusterlite S S Stock	48.2		

## 1296 GULF REFINING COMPANY, A CORPORATION, vs.

858	Spec. Kero. Stk.	51.4			
837	Standard White	43.0			
11	Vinton Crude	) 20.5	1.3		
824	100 Elliott	) 45.6	108 Ell	340	-21 OK 0 Trace of floc.
841	Sunb.	) 46.5	87a	285	-21 OK 1 Trace of floc.
827	Radium	) 10 45.0	131 TOC	400	-25 OK 0
828	Lusterlite	) 45.8	96a	315	-22 OK No floc.
853	76 Abel	) 21.4	76a	95.5 percent	-25 OK
	Barge Vinton Crude	) 19.4	.9		Warren
	Barge Vinton Crude	) 19.7	.8		Nellie
Cars	Keiffer	80.0)	12-10-16	25-	1763
Cars	Keiffer	80.8)		25-	1239
Cars	Keiffer	80.0)		25-	1607
Cars	Keiffer	80.7)		25-	2006
Cars	Keiffer	77.7)		25-	961
Cars	Keiffer	79.9)		25-	1209
Cars	Keiffer	80.3)	12-10-16	25-	1602
Cars	Keiffer	79.8)		25-	1001
Cars	Keiffer	80.8)		25-	1014
	Barge Vinton Crude	19.5	1.0		Star
23	Okla Crude	36.2	.9 per cent		
13	Vinton Crude	20.9	1.1		From Warren & Nellie
13	Vinton Crude	20.2	1.3		From Barge Star
	Barge Vinton Crude	19.9	.8 per cent		From Barge Arnold
	Barge Vinton Crude	20.0	.9 per cent		From Barge Tyler
Car No. I. C.	33970	106	Drums C. asp. M.P.	244	
Car No. S. L. W.	12466	105	Drums C. asp. M.P.	244	
Car No. C. R. I. & P.	38891	105	Drums C. asp. M.P.	244	
Car No. B. O.	181287	29	Drums B. asp. M.P.	218	
Car No. B. O.	181287	78	Drums B. asp. M.P.	228	
Car No. I. & G.	3370	108	Drums B. asp. M.P.	228	
Car No. G. P.	16585	106	Drums C. asp. M.P.	254	
Car No. C. P.	212181	108	Drums B. asp. M.P.	218	
Car No. G. G.	16580	83	Drums C. asp. M.P.	254	
10	Drums C. asp. M.P.	244			
12	Drums C. asp. M.P.	242			
	Drums Lusterlite	45.5	102a	22—	Local
709	Crude	41.9	Below 60 OC 0	.4	Residue 35 Spec.
710	Crude	42.0	Below 60 OC 0	.1	Residue 45 Spec.
711	Crude	34.3	Below 60 OC 15	2.6	Residue 40 Spec.
712	Crude	39.4	Below 60 OC 0	0.3	Residue 50 Spec.
713	Crude	34.9	Below 60 OC 10	.4	Residue 0 Spec.
714	Crude	30.7	Below 85 OC 15	1.1	Residue 20 Spec.
716	Crude	31.5	Below 60 OC 0	0.8	Residue Spec.
717	Crude	35.7	Below 60 OC 15	Trace	Residue Spec.
718	Crude	36.7	Below 60 OC 10	0.1	Residue Spec.
719	Crude	32.5	Below 60 OC 0	0.4	Residue Spec.
517 B	Crude	42.2	Below 60 OC 0	0.8	Residue 50 Spec.
523 B	Crude	30.1	Below 60 OC 0	1.8	Residue 0 Spec.
13	Vinton Crude	20.5		1.3	
Fillers 501 1	Cylinder	22.1	540 605 199	30	Pous
Bb's	4 Pale		161	46	



Bbls.	3 Pale			216	60	
Bbls.	2 Pale			332	72	
Bbls.	Spec.	Red		523	270	
Drums	Signal	Oil	30.9 260	310	47	30/25
857	Gasoline	38370	60.7	25+		1027
857	Gasoline	38379	60.6	25+		1607
857	Gasoline	38403	60.6	25+		1001
857	Gasoline	38368	60.7	25+		1020
857	Gasoline	38577	60.7	25+		2006
857	Gasoline	38367	60.8	25+		208
857	Gasoline	37376	60.7	25+		623 A
857	Gasoline	37376	60.7	25+		623 B
857	Gasoline	37376	60.7	25+		623 C
857	Gasoline	38369	60.7	25+		1445
857	Gasoline	38366	60.8	25+		305
857	Gasoline	38353	60.8	25+		1395
857	Gasoline	38354	60.7	25+		1308
857	Gasoline	38355	60.7	25+		1500
857	Gasoline	38356	60.8	25+		1034
857	Gasoline	38364	60.7	25+		915
857	Gasoline	38365	60.8	25+		2011
860	Lusterlite	38342	45.9 100a	21+		1155
860	Lusterlite	38296	45.9 100a	21+		2012
825	Lust.—		46.0 79a 315	24	OK 1 Lt.	trace
Barge	Vinton Crude		19.6 1.0 per cent	Batson		
13	Vinton Crude		20.3 1.3	From Batson		
26	Okla Crude		36.2 0.5			
41 28	Gas Oil		30.1 174 0.1	Elvista		
1153	123½—	.30-510				
1121	124 —	(.30-510				
		(1.0-510				
		(.20-200				
1124	121 —	(.30-516				
		(.50-500				
1125	129¾—	.50-500				
1126	130¾—	.50-500				
1091	122 —	.50-500				

238	Friday December 15, 1916.	239
511	Gasoline	60.6 25+ 135-385
520	Gasoline	60.6 25+ 132-380
805	Gasoline	63.4 25+ 112-380
857	Gasoline	60.7 25+ 140-371

266	Friday, December 29, 1916.	267
Car	Kieffer	79.9 25+ 1066
Car	Kieffer	79.7 25+ 1040
Car	Kieffer	79.3 25+ 329

1298 GULF REFINING COMPANY, A CORPORATION, vs.

272	January 1, 1917.				273
Car	Kiefer	77.6	25+	76/350	1030

274	Wednesday, January 3, 1917.				275
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511	Gasoline	59.7	25+	O.K.	
520	Gasoline	60.4	25+	O.K.	139-383
805	Gasoline	65.0	25+	O.K.	117-360
857	Gasoline	60.8	25+	O.K.	140-372
329	Crude Naphtha	57.2			

276					277
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Car	Kiefer	76.8	25+		1384
Car	Kiefer	76.7	25+		1111
Car	Kiefer	76.6	25+		242
Car	Kiefer	76.6	25+		309
Car	Kiefer	76.5	25+		1619
Car	Kiefer	76.4	25+		410

286	Monday, January 8, 1917.				287
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857	Gasoline	38807	60.6	25+	1225
338	Gasoline	7626	54.7	25+	1359
938	Gasoline	7626	55.0	25+	2008
838	Gasoline	7626	55.0	25+	328
838	Gasoline	7626	54.9	25+	1153
838	Gasoline	7626	54.7	25+	1385
338	Gasoline	7626	54.8	25+	445

286					287
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Cars	Keiffer	81.2	25+		427
Cars	Keiffer	79.4	25+		1331
Cars	Keiffer	78.3	25+		1006
Cars	Keiffer	81.3	25+		1206
Cars	Keiffer	78.8	25+		1038
Cars	Keiffer	79.4	25+		1148
Cars	Keiffer	81.2	25+		1397
Cars	Keiffer	81.7	25+		1026
Cars	Keiffer	79.3	25+		325
Cars	Keiffer	79.4	25+		1228

290	Wednesday, January 10, 1917.				291
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Cars	Keiffer	80.4	Car No.	1136
Cars	Keiffer	79.6	Car No.	422
Cars	Keiffer	79.7	Car No.	1763

UNITED STATES OF AMERICA.

1295

Cars	Keiffer	80.4	Car No.	1079
Cars	Keiffer	81.5	Car No.	1054
Cars	Keiffer	80.4	Car No.	1602
Cars	Keiffer	79.4	Car No.	1100
Cars	Keiffer	79.9	Car No.	1612
Cars	Keiffer	81.5	Car No.	1211
Cars	Keiffer	81.3	Car No.	1232
Cars	Keiffer	79.2	Car No.	1220
Cars	Keiffer	79.7	Car No.	1681
Cars	Keiffer	80.2	Car No.	2016

300

Monday, January 15, 1917.

301

Cars	Kiefer	81.5	25+	1387
Cars	Kiefer	81.5	25+	920
Cars	Kiefer	81.5	25+	1208
Cars	Kiefer	80.6	25+	1327
Cars	Kiefer	81.8	25+	309
Cars	Kiefer	82.4	25+	2020
Cars	Kiefer	83.4	25+	973
Cars	Kiefer	83.3	25+	961
Cars	Kiefer	79.0	25+	1024
Cars	Kiefer	83.8	25+	2006
Cars	Kiefer	81.9	25+	1619
Cars	Kiefer	81.2	25+	1500
Cars	Kiefer	82.2	25+	1111
Cars	Kiefer	81.2	25+	437

306

Friday, January 19, 1917.

307

511	Gasoline	62.4	25+	128-380
520	Gasoline	MT		MT
805	Gasoline	62.8	25+	99-375
857	Gasoline	62.5	25+	126-355
829	Crude Naphtha	55.9		

308

309

Cars	Keiffer	83.8	25+	1278
Cars	Keiffer	82.8	25+	2025
Cars	Keiffer	83.0	25+	428
Cars	Keiffer	83.7	25+	1347

312

Monday, January 22, 1917.

313

Cars	Keiffer	80.4	25+	1116
Cars	Keiffer	79.9	25+	1301
Cars	Keiffer	80.5	25+	222

1302 GULF REFINING COMPANY, A CORPORATION, vs.

838	Ptrs. Nap.	7626	55.0	25+	168
838	Ptrs. Nap.	7626	55.0	25+	1763

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152 Tuesday, December 19, 1916. 153

511	Gasoline	60.6	25+	133-392
520	Gasoline	60.7	25+	128-383
805	Gasoline	63.1	25+	129-381
857	Gasoline	60.7	25+	134-380
829	Crude Naphtha	56.7		

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154 Page 155

Cars	Kiefer	79.7	25+	621 B & C
Cars	Kiefer	79.4	25+	1113
Cars	Kiefer	79.3	25+	1378
Cars	Kiefer	79.2	25+	1621
Cars	Kiefer	78.8	25+	437
Cars	Kiefer	78.7	25+	1143
Cars	Kiefer	78.6	25+	1039
Cars	Kiefer	78.2	25+	621 A

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164 Saturday, December 23, 1916. 165

Car	Keifer	77.6	25+	1360
Car	Keifer	77.4	18+	957

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172 Tuesday, December 26, 1916. 173

838	Ptrs Naptha	7626	54.9	25+	1116
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174 Thursday, December 28, 1916. 175

Cars	Keifer	79.4	25+	1613
Cars	Keifer	79.3	25+	1239
Cars	Keifer	79.1	25+	1225

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196 Saturday, January 6, 1917. 197

Car	Kiefer	78.4	25+	1385
Car	Kiefer	78.6	25+	1080
Car	Kiefer	78.5	25+	445

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204 Thursday, January 11, 1917. 205

511	Gasoline	60.4	25+	130-393
520	Gasoline	MT		MT

## UNITED STATES OF AMERICA.

1303

805	Gasoline	62.1	25+	103-392
857	Gasoline	63.0	25+	120-374
829	Crude Naphtha			

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206				207
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Car	Kiefer	80.4		1136
	Kiefer	80.2		2016
	Kiefer	81.5		1054
	Kiefer	79.4		1100
	Kiefer	81.3		1232
	Kiefer	81.5		1211
	Kiefer	80.4		1079
	Kiefer	79.7		1763
	Kiefer	79.7		168
	Kiefer	80.4		1602
	Kiefer	79.2		1220
	Kiefer	79.6		422

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214	Tuesday, January 16, 1917.			215
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511	Gasoline	62.4	25+	
520	Gasoline	MT		MT
805	Gasoline	61.0	25+	
857	Gasoline	61.7	25+	
829	Crude Naphtha	56.8		

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234	Thursday, January 25, 1917.			235
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511	Gasoline	60.8	25+	112-375
520	Gasoline	60.4	25+	118-382
805	Gasoline	62.3	25+	113-357
857	Gasoline	MT		MT
829	Crude Naphtha	55.4		

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236				237
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Cars	Keiffer	80.2	25+	2008
Cars	Keiffer	80.2	25+	1153
Cars	Keiffer	80.6	25+	1620
Cars	Keiffer	80.8	25+	368
Cars	Keiffer	80.2	25+	953
Cars	Keiffer	80.3	25+	1359
Cars	Keiffer	80.7	25+	1718
Cars	Keiffer	80.1	25+	1055
Cars	Keiffer	80.1	25+	328

## 1304 GULF REFINING COMPANY, A CORPORATION, VS

250	Thursday, February 1, 1917.				251
Cars	Keiffer	81.2	25+		2016
Cars	Keiffer	81.5	25+		168
Cars	Keiffer	81.8	25+		1384
Cars C	Keiffer	81.7	25+		622
Cars B	Keiffer	77.5	25+		622
Cars A	Keiffer	81.1	25+		622
Cars C	Keiffer	80.4	25+		620
Cars B	Keiffer	80.2	25+		620
Cars A	Keiffer	81.3	25+		620
Cars C	Keiffer	81.5	25+		615
Cars B	Keiffer	81.6	25+		615
Cars A	Keiffer	81.9	25+		615
<hr/>					
258	Saturday, February 3, 1917.				259
Cars	Keiffer	81.0	25+		445
Cars	Keiffer	81.5	25+		1261
Cars	Keiffer	81.1	25+		1360
<hr/>					
260	Tuesday, February 6, 1917.				261
511	Gasoline	60.9			
520	Gasoline	MT			
805	Gasoline	61.5			
829	Crude Naphtha	46.6			
<hr/>					
264					265
Cars	Keiffer	79.4	25+		2013
Cars	Keiffer	80.0	25+		2010
Cars	Keiffer	81.8	25+		329
<hr/>					
282	Thursday, February 15, 1917.				283
Cars	Keiffer	80.8	25+		1347
Cars	Keiffer	80.9	25+		913
Cars A	Keiffer	80.2	25+		617
Cars c	Keiffer	80.8	25+		617
Cars B	Keiffer	80.5	25+		617
Cars	Keiffer	80.3	25+		1131
Cars	Keiffer	80.4	25+		1080
Cars	Keiffer	80.7	25+		335
Cars	Keiffer	80.6	25+		309
Cars	Keiffer	80.7	25+		1111
Cars	Keiffer	80.5	25+		169
Cars	Keiffer	80.6	25+		242
Cars	Keiffer	80.8	25+		1506
Cars	Keiffer	80.5	25+		150

290	Tuesday, February 20, 1917.				291
Car	Keiffer	79.2	25+	NG	1387
Car	Keiffer	79.6	25+	NG	1620
Car	Keiffer	80.1	25+	NG	392
Car	Keiffer	80.0	25+	NG	426
Car	Keiffer	78.6	25+	NG	1261
Car	Keiffer	80.1	25+	NG	900
Car	Keiffer	79.8	25+	NG	1211
Car	Keiffer	79.8	25+	NG	1445
Car	Keiffer	76.9	25+	NG	1356
Car	Keiffer	78.5	25+	NG	1319

296	Thursday, February 22, 1917.				297
Car	Keiffer	79.5	25+		2008
Car	Keiffer	79.6	25+		1370
Car	Keiffer	79.7	25+		953
Car	Keiffer	78.6	25+		445
Car	Keiffer	79.0	25+		1153
Car	Keiffer	79.3	25+		1114
Car	Keiffer	79.2	25+		1384
Car	Keiffer	78.3	25+		1278
Car	Keiffer	78.0	25+		1619
Car	Keiffer	79.0	25+		1026
Car	Keiffer	79.7	25+		629
Car	Keiffer	79.9	25+		985
Car	Keiffer	78.8	25+		434

336	Tuesday, March 13, 1917.				337
					Over Dry
520	Navy Gasoline	64.2	25+		130-345
511	Gasoline	60.4	25+		130-388
305	Gasoline	63.1	25+		110-360
857	Navy Gasoline	63.6	25+		127-360
829	Crude Naphtha	56.0			

340					341
Car	Keiffer	76.5	25+		1021
Car	Keiffer	77.1	25+		242
Car	Keiffer	77.4	25+		1178
Car	Keiffer	77.7	25+		1150- 434
Car	Keiffer	77.8	25+		1082
Car	Keiffer	77.9	25+		1385
Car	Keiffer	78.1	25+		335
Car	Keiffer	78.4	25+		1006-1507



1306 GULF REFINING COMPANY, A CORPORATION, vs.

Car	Keiffer	78.9	25+	1024- 950
Car	Keiffer	79.2	25+	1620

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346 Saturday, March 17, 1917. 347

520	Navy Gasoline	63.3	25+	126-366
511	Gasoline	61.6	25+	110-368
805	Gasoline	63.3	25+	120-364
857	Navy Gasoline	63.4	25+	130-364
829	Crude Naphtha	55.7		

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346 347

Cars	Keiffer	78.8	25+	1609
Cars	Keiffer	79.6	25+	1038
Cars	Keiffer	78.4	25+	1206

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350 Tuesday, March 20, 1917. 351

520	Navy Gasoline	63.2	25+	128-370
511	Gasoline	61.6	25+	120-386
805	Gasoline	62.8	25+	120-368
857	Navy Gasoline	63.3	25+	130-354
829	Crude Naphtha	56.2		

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352 353

Car	Keiffer	79.4	25+	1052
Car	Keiffer	80.4	25+	2014
Car	Keiffer	76.9	25+	2016
Car	Keiffer	78.5	25+	1112
Car	Keiffer	78.5	25+	1272
Car	Keiffer	79.3	25+	1029
Car	Keiffer	78.9	25+	1148
Car	Keiffer	78.6	25+	1068
Car	Keiffer	78.7	25+	A623
Car	Keiffer	77.4	25+	B623
Car	Keiffer	78.3	25+	C623
Car	Keiffer	78.7	25+	A614
Car	Keiffer	77.6	25+	B614
Car	Keiffer	78.7	25+	C614
Car	Keiffer	76.3	25+	A621
Car	Keiffer	77.7	25+	B621
Car	Keiffer	78.2	25+	C621
Car	Keiffer	80.3	25+	1049
Car	Keiffer	78.6	25+	2022
Car	Keiffer	78.3	25+	251

## UNITED STATES OF AMERICA.

1307

366	Tuesday, March 27, 1917.			367
Car	Keiffer	79.4	25+	2024
Car	Keiffer	78.2	25+	1114
Car	Keiffer	78.1	25+	335
Car	Keiffer	79.2	25+	1135
Car	Keiffer	79.4	25+	1207
Car	Keiffer	78.3	25+	1006
Car	Keiffer	78.1	25+	2025
Car	Keiffer	79.1	25+	950
Car	Keiffer	76.3	25+	985

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370	Thursday, March 29, 1917.			371
Car	Keiffer	77.5	25+	1156
Car	Keiffer	78.1	25+	368
Car	Keiffer	76.8	25+	1228
Car	Keiffer	77.3	25+	1041
Car	Keiffer	77.2	25+	408
Car	Keiffer	78.4	25+	1257
Car	Keiffer	80.5	25+	1333
Car	Keiffer	80.0	25+	1270
Car	Keiffer	77.6	25+	2019

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## Government's Exhibit 80.

NOV.—1916.

Car number and Initial.	THEIR BILLING.		Into Tank No.	Temp.	Gravity.	Net Gallons.	OUR RECEIPTS.			Temp.	Net Gallons.
	Date	Gross Gallons.					Outage.	Cross Gallons.	Color.		
	Unloaded.										
GRCX 1608	11/3/16	8,020	838	58°	76.6	8,030	4-1/2"	7,858	25	70°	7,906
2021	11/3/16	8,152	838	58	75.8	8,163	6	7,863	25	70	7,811
1024	11/9/16	8,145	838	62	77.5	8,134	9	7,664		70	7,613
1034	11/9/16	8,201	838	63	78.5	8,185	4	8,054		70	8,000
1239	11/9/16	8,099	838	62	78.0	8,089	5	7,897		70	7,844
1355	11/9/16	8,090	838	68	77.8	8,047	8	7,759		70	7,707
1366	11/9/16	8,093	838	66	78.3	8,061	6	7,830	25	70	7,778
1131	11/9/16	8,138	838	69	76.3	8,052	9	7,616		70	7,565
1247	11/9/16	8,093	838	62	77.2	8,083	10	7,535		70	7,485
1352	11/9/16	8,095	838	68	77.0	8,052	4	7,950		70	7,897
1385	11/9/16	8,092	838	66	76.4	8,060	8	7,960		70	7,639
1600	11/9/16	8,013	838	64	77.0	7,992	10	7,493		70	7,443
2029	11/9/16	8,152	838	65	76.0	8,125	10	7,541		70	7,491
973	11/10/16	8,056	838	66	77.1	8,006	8	7,656	25	68	7,615
1017	11/10/16	8,148	838	68	76.0	8,105	10	7,586	25	68	7,546
1237	11/9/16	8,099	838	68	77.8	8,056	4	7,954		70	7,901
1251	11/9/16	8,096	838	66	77.5	8,064	4	7,951		70	7,898
1397	11/10/16	8,099	838	66	77.4	8,067	3	8,005	x21	68	7,962
1718	11/9/16	8,103	838	68	76.9	8,060	6	7,842		70	7,790
222	11/10/16	6,530	838	64	77.7	6,513	4	6,398	25	68	6,364

242	11/10/16	6,517	838	62	77.6	6,508	25	3	6,432	68	6,398
251	11/10/16	6,510	838	62	77.2	6,502	25	4	6,378	68	6,344
915	11/15/16	8,057	805	62	77.2	8,028	25	7	7,727	40	7,830
1143	11/10/16	8,371	838	66	76.1	8,301	25	6	8,075	68	8,032
1245	11/10/16	8,096	838	66	77.6	8,064	25	5	7,894	68	7,852
1602	11/10/16	8,023	838	68	77.8	7,981	25	3	7,936	68	7,894
1619	11/10/16	8,016	838	66	77.8	7,985	25	4	7,881	68	7,839
368	11/15/16	7,076	805	64	75.7	7,027	25	6	6,826	40	6,917
1225	11/15/16	8,095	805	62	77.1	8,084	25	5	7,893	40	7,998
1347	11/15/16	8,090	805	63	77.2	8,074	25	6	7,827	40	7,931
1066	11/18/16	8,158	805	60	78.6	8,158	25	3	8,063	66	8,031
1080	11/15/16	8,185	805	66	77.4	8,153		6	7,919	54	7,95
1301	11/15/16	8,093	805	64	77.7	8,072		5	7,891	54	7,923
2010	11/15/16	8,150	805	56	78.6	8,172		9	7,627	54	7,656
1020	11/15/16	8,191	805	62	77.9	8,180		8	7,784	54	7,815
1208	11/15/16	8,083	805	64	77.9	8,062		4	7,938	54	7,970
1319	11/15/16	8,096	805	59	78.2	8,101		5	7,894	54	7,926
392	11/18/16	7,017	805	62	77.3	7,008	25	4	6,917	66	6,889
150	11/18/16	8,000	805	46	78.0	7,971	25	3	7,907	66	7,875
309	11/18/16	6,662	805	48	78.3	6,610	25	4	6,532	66	6,506
900	11/18/16	8,055	805	48	78.7	8,030	25	4	7,911	66	7,879
1616	11/18/16	8,017	805	50	77.9	7,987	25	8	7,642	66	7,611
1621	11/18/16	8,016	805	48	77.8	7,986	25	7	7,708	66	7,677
1037		8,191		52	81.5	8,191	25	4	8,044	66	8,012
2011		8,152		54	79.2	8,184	25	3	8,048	66	8,016
1082		8,144		50	78.9	8,198	25	6	7,879	66	7,847
1278		8,092		54	79.0	8,124		6	7,829	66	7,797

NOV., 1916—Continued.

Car number and Initial.	THEIR BILLING.			OUR RECEIPTS.				Net Gallons.
	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp.	Gravity.	Net Gallons.	Outage.	
GRCX 218	11/29/16	6,542	805	48°	79.1	6,594	25 3"	66°
2018	11/29/16	8,150	805	42	79.1	8,166	25 10	62
1036	11/29/16	8,220	805	40	79.0	8,232	25 8	62
						<u>394,677</u>		<u>381,334</u>

50	Their billing.....	394,677
Our file.	Our receipts.....	381,334
	Difference.....	<u>13,343</u>

DEC.—1916.

Car number and Initial.	THEIR BILLING.		OUR RECEIPTS.				Net	
	Date	Gross Gallons.	Into Tank No.	Temp.	Gravity.	Gallons.	Net Gallons.	Temp.
GRCX 1603	12/2/16	8,018	805	56°	79.4	8,039	7,643	68°
936	12/2/16	8,058	805	56	79.7	8,060	7,502	68
913	12/2/16	8,056	805	44	80.6	8,122	7,855	68
1359	12/2/16	8,086	805	44	79.7	8,076	7,992	68
1366	12/2/16	8,093	805	46	80.3	8,073	7,891	68
2013	12/2/16	8,148	805	48	79.8	8,132	7,860	68
2019	12/2/16	8,147	805	50	78.6	8,120	8,044	68
368	12/5/16	7,076	805	52	69.3	7,000	7,076	70
915	12/5/16	8,057	805	46	66.1	8,038	8,057	70
1110	12/5/16	8,134	805	50	66.2	8,084	8,134	70
1225	12/5/16	8,095	805	46	78.8	8,075	7,185	70
1327	12/5/16	8,096	805	44	77.4	8,087	7,367	70
1612	12/5/16	8,023	805	46	77.2	8,013	7,174	70
422	12/5/16	7,044	805	54	77.9	6,362	6,914	70
1078	12/5/16	8,129	805	56	77	8,056	7,983	70
1144	12/5/16	8,130	805	56	75.8	8,048	7,608	70
1233	12/5/16	8,092	805	56	77.4	8,019	7,891	70
1237	12/5/16	8,099	805	54	77	8,037	8,005	70
1061	12/5/16	8,180	805	54	77.2	8,117	7,914	70
961	12/10/16	8,056	805	54	77.7	7,995	7,331	60
1114	12/8/16	8,136	805	55	77.4	8,082	7,697	58
1201	12/8/16	8,082	805	56	77.8	8,008	7,819	58

UNITED STATES OF AMERICA.

1311

DEC., 1916—Continued.

Car number and Initial.	THEIR BILLING.			OUR RECEIPTS.							
	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp.	Gravity.	Net Gallons.	Color.	Outage.	Gross Gallons.	Temp.	Net Gallons.
GRCX 1250	12/8/16	8,098	805	56°	78.1	8,033	25	8"	7,696	58°	7,706
1395	12/8/16	8,096	805	55	77.3	8,028	25	12	7,367	58	7,377
2012	12/8/16	8,147	805	52	77.6	8,110	25	10	7,537	58	7,547
1218	12/15/16	8,095	805	54	79.5	8,033		10	7,536	54	7,566
2022	12/15/16	8,150	805	48	79.3	8,134		8	7,712	54	7,743
1001	12/10/16	8,158	805	56	79.8	8,086	25	8	7,753	60	7,753
1014	12/10/16	8,161	805	54	80.8	8,098	25	4	8,015	60	8,015
1072	12/15/16	8,138	805	54	79.4	8,078		8	7,734	54	7,765
1209	12/10/16	8,092	805	56	79.9	8,019	25	8	7,690	60	7,690
1239	12/10/16	8,099	805	54	80.8	8,033	25	8	7,696	60	7,696
1602	12/10/16	8,023	805	56	80.3	7,951	25	6	7,779	60	7,779
1607	12/10/16	8,016	805	54	80	7,954	25	11	7,420	60	7,420
1763	12/10/16	8,100	805	52	80	8,048	25	6	7,839	60	7,839
2006	12/10/16	8,146	805	56	80.7	8,087	25	6	7,858	60	7,858
437	12/19/16	8,137	805	50	78.8	8,071	25	8	7,733	72	7,671
621	12/19/16	8,005	805	52	79.2	7,954	25	8-A-2518			
					79.7		25	6-B-2633			
					79.7		25	5-C-2568			
1039	12/19/16	8,157	805	58	78.6	8,072	25	5	7,719	72	7,657
1143	12/19/16	8,371	805	56	78.7	8,059	25	4	7,954	72	7,890
1113	12/19/16	8,139	805	56	79.4	8,031	25	6	8,208	72	8,142
1378	12/19/16	8,093	805	56	79.3	8,020	25	6	7,851	72	7,788
							25		7,830	72	7,767



7,281  
7,648  
7,680  
8,060  
7,971  
8,068  
6,808  
8,073  
7,904  
7,662  

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399,904

7,340	72
7,658	62
7,690	62
8,049	58
7,950	56
8,047	56
6,799	58
8,062	58
7,893	58
7,642	56

25 12  
18x 8  
25 8  
25 3  
25 4  
25 2  
25 6  
25 4  
25 6  
25 8

79.2	7,954
77.1	8,049
77.6	8,082
77.6	8,124
79.1	8,086
79.3	8,080
79.3	7,057
79.7	8,276
79.9	8,214
79.4	8,061

805	54
805	44
805	44
805	46
805	44
805	46
805	34
805	30
805	32
805	34

8,016  
8,058  
8,092  
8,143  
8,095  
8,099  
7,049  
8,209  
8,158  
8,107

12/19/16  
12/23/16  
12/23/16  
1/3/17  
12/28/16  
12/28/16  
12/29/16  
12/29/16  
12/29/16  
12/28/16

1621  
957  
1360  
1030  
1225  
1239  
329  
1040  
1066  
1613

415.525

Their billing. . . . .	415,525
Our receipts. . . . .	399,904
Difference. . . . .	<u>15,621</u>

JAN.—1917.

Car number and Initial.	THEIR BILLING.			OUR RECEIPTS.			Net Gallons.
	Late Unloaded.	Gross Gallons.	Into Tank No.	Temp.	Gravity.	Net Gallons.	
GRCX 1111	1/3/17	8,137	805	30°	76.7	11"	7,418
1619	1/3/17	8,016	805	30	76.5	1' 1	7,237
309	1/3/17	6,662	805	40	76.6	1 4	5,664
242	1/3/17	6,517	805	52	76.6	1 4	5,504
410	1/3/17	8,153	805	50	76.4	1 6	6,821
1384	1/3/17	8,092	805	50	76.8	1 4	6,970
445	1/5/17	8,140	805	38	78.5	8	7,714
1080	1/5/17	8,185	805	38	78.6	8	7,757
1385	1/5/17	8,092	805	38	78.4	10	7,514
422	1/11/17	7,044	805	46	79.6	6	6,822
1100	1/11/17	8,134	805	48	79.4	6	7,867
1220	1/11/17	8,096	805	46	79.2	6	7,854
168	1/11/17	7,016	805	38	79.7	8	6,552
1054	1/11/17	8,094	805	36	81.5	1 0	7,386
1079	1/11/17	8,147	805	38	80.4	10	7,605
1136	1/11/17	8,144	805	36	80.4	10	7,554
1211	1/11/17	8,093	805	38	81.5	1 0	7,385
1232	1/11/17	8,095	805	38	81.3	10	7,556
1602	1/11/17	8,023	805	38	80.4	8	7,668
1612	1/11/17	8,023	805	40	79.9	1 1	7,281
1763	1/11/17	8,100	805	38	79.9	8	7,722

2016	1/11/17	8,153	805	40	80.2	8,181			1	3	7,056	56	7,075
325	1/8/17	6,670	805	48	79.3	6,638	25		8	8	6,310	66	6,285
427	1/8/17	8,153	805	47	81.2	8,103	25		10		7,590	66	7,560
1006	1/8/17	8,128	805	48	78.3	8,098	25		8	8	7,724	66	7,693
1026	1/8/17	8,173	805	46	81.7	8,154	25		8	8	7,767	66	7,736
1038	1/8/17	8,151	805	52	78.8	8,099	25		10	10	7,589	66	7,559
1148	1/8/17	8,130	805	48	79.4	8,091	25		8	8	7,691	66	7,660
1206	1/8/17	8,089	805	46	81.3	8,070	25		8	8	7,687	66	7,656
1228	1/8/17	8,089	805	47	79.4	8,064	25		10	10	7,531	66	7,501
1331	1/8/17	8,092	805	52	79.4	8,041	25		6	6	7,829	66	7,798
1397	1/8/17	8,099	805	46	81.2	8,080	25		1	2	7,189	66	7,160
961	1/16/17	8,056	805	44	83.3	8,048	25		1	1	7,242	46	7,310
973	1/16/17	8,056	805	46	83.4	8,037	25		10	10	7,500	46	7,570
1024	1/16/17	8,145	805	44	79	8,137	25		8	8	7,740	46	7,812
1327	1/16/17	8,096	805	44	80.6	8,087	25		10	10	7,537	46	7,607
2006	1/16/17	8,146	805	46	83.9	8,141	25		8	8	7,706	46	7,778
428	1/19/17	8,175	805	44	83.0	8,142	25		8	8	7,769	50	7,821
1278	1/19/17	8,097	805	46	83.8	8,078	25		8	8	7,690	50	7,741
1347	1/19/17	8,090	805	45	83.7	8,076	25		6	6	7,827	50	7,879
2025	1/19/17	8,153	805	44	82.8	8,159	25		6	6	7,864	50	7,916
309	1/16/17	6,662	805	45	81.8	6,642	25		6	6	6,426	46	6,486
437	1/16/17	8,137	805	48	81.2	8,107	25		6	6	7,873	46	7,946
920	1/16/17	8,057	805	44	81.5	8,048	25		6	6	7,795	46	7,868
1111	1/16/17	8,137	805	50	82.2	8,087	25		6	6	7,849	46	7,922
1208	1/16/17	8,083	805	50	81.5	8,042	25		8	8	7,681	46	7,753
1387	1/16/17	8,095	805	48	81.5	8,065	25		8	8	7,693	46	7,765
1500	1/16/17	12,029	805	49	81.2	11,999	25		6	6	11,696	46	11,805



1397	1/31/17	8,099	805	40	79.2	8,112	10	7,540	58	7,550
2027	1/29/17	8,149	805	40	79.7	8,177	10	7,539	58	7,549
						<u>559,232</u>				



# UNITED STATES OF AMERICA.

1319

1237	2/14/17	8,099	805	38	79.0	8,122	25	4	7,954	66	7,922
1065	2/9/17	8,131	805	36	81.2	8,165	25	3	8,037	64	8,016
1068	2/9/17	8,137	805	34	80.8	8,182	25	8	7,733	64	7,712
1321	2/9/17	8,089	805	36	80.6	8,123	25	4	7,944	64	7,923
2022	2/9/17	8,152	805	34	81.2	8,212	25	Full	8,152	64	8,130
309	2/15/17	6,662	805	31	80.6	6,705	25	5	6,482	62	6,473
621	2/12/17	8,005	805	30	79.8	8,070	25-A-2564	6			
					80.3		25-B-2586	8			
					80.3		25-C-2503	8			
934	2/12/17	8,061	805	30	76.9	8,127	25	8	7,653	62	7,643
1331	2/12/17	8,092	805	30	80.3	8,159	25	8	7,660	62	7,650
236	2/14/17	6,509	805	42	78.9	6,520	25	6	7,829	62	7,819
960	2/14/17	8,061	805	40	78.7	8,074	25	3	6,424	66	6,398
1015	2/14/17	8,183	805	40	79.9	8,196	25	6	7,799	66	7,768
1144	2/14/17	8,130	805	42	78.5	8,123	25	8	7,776	66	7,745
1462	2/4/17	8,093	805	42	79.2	8,095	25	10	7,521	66	7,491
150	2/5/17	8,000	805	36	80.5	8,033	25	8	7,691	66	7,660
169	2/15/17	7,016	805	37	80.5	6,980	25	Full	8,000	62	7,989
335	2/15/17	7,054	805	37	80.7	7,071	25	6	6,766	62	6,767
913	2/15/17	8,056	805	37	80.9	8,086	25	4	6,916	62	6,907
1080	2/15/17	8,185	805	43	80.4	8,182	25	6	7,794	62	7,784
1239	2/4/17	8,099	805	42	78.7	8,101	25	4	8,038	62	8,027
1620	2/20/17	8,020	805	44	79.6	8,017	25	3	8,005	66	7,973
242	2/15/17	6,517	805	34	80.6	6,564	25	6	7,776	66	7,745
617	2/15/17	7,974	805	32	80.2	8,008	25-A-2553	3	6,432	62	6,423
					80.5		25-B-2682	5			
					80.8		25-C-2541	5	7,776	62	7,766



## 1320 GULF REFINING COMPANY, A CORPORATION, vs

FEB., 1917—Continued.

Car number and Initial.	THEIR BILLING.		OUR RECEIPTS.		Net Gallons.	Temp.	Gross Gallons.	Temp.	Net Gallons.	Temp.
	Date	Unloaded.	Gross Gallons.	Tank No.						
GRCX 1111	2/15/17	8,137	805	32°	80.7	8,183	25	3"	8,034	62°
1131	2/15/17	8,138	805	34	80.3	8,174	25	5	7,918	62
1347	2/15/17	8,090	805	31	80.8	8,151	25	6	7,827	62
1387	2/20/17	8,095	805	32	79.2	8,150	25	4	7,950	66
1500	2/15/17	12,029	805	32	80.8	12,132	25	2	11,964	62
392	2/20/17	7,055	805	35	80.4	7,058	25	6	6,805	66
426	2/20/17	8,180	805	36	80.0	8,162	25	4	8,034	66
900	2/20/17	8,055	805	36	80.1	7,785	25	4	7,911	66
332#	2/26/17	12,025	805	36	77.8	12,096	25	1' 7	5,736	68
1042	2/26/17	8,185	805	38	78.1	8,209	25	10	7,620	66
1211	2/20/17	8,093	805	34	79.8	8,138	25	3	7,999	66
1261	2/20/17	8,093	805	32	78.6	8,148	25	8	7,691	66
1319	2/20/17	8,096	805	32	78.3	8,151	25	10	7,537	66
1356	2/20/17	8,093	805	30	76.9	8,159	25	8	7,691	66
1445	2/20/17	8,092	805	32	79.8	8,147	25	Full	8,092	66
427	2/28/17	8,153	805	32	76.7	8,183	25	1' 5	6,941	70
1100	2/28/17	8,134	805	33	77.1	8,175	25	1' 6	6,715	70
1113	2/28/17	8,139	805	32	76.5	8,185	25	1' 3	7,043	70
1208	2/28/17	8,083	805	32	77.3	8,138	25	1' 7	6,676	70
1366	2/28/17	8,093	805	32	76.5	8,148	25	1 8	6,578	70
410	2/26/17	8,153	805	32	78.3	8,156	25	1 2	7,237	68
445	2/28/17	8,140	805	38	78.6	8,138	25	11	7,498	68
985	2/28/17	8,055	805	38	79.9	8,079	25	10	7,499	68

1027	2/26/17	8,179	805	36	79.6	8,214	25	8	7,773	66	7,742
1136	2/26/17	8,144	805	36	79.4	8,169	25	10	7,582	66	7,552
1278	2/20/17	8,092	805	38	78.3	8,115	25	12	7,364	68	7,325
2016	2/26/17	8,153	805	32	78.8	8,224	25	1	7,042	68	7,004
434	2/22/17	8,180	805	40	78.6	8,141	25	10	7,616	68	7,575
1029	2/26/17	8,225	805	40	78.9	8,238	25	11	7,573	66	7,543
1153	2/22/17	8,130	805	39	79.0	8,139	25	10	7,569	68	7,529
1243	2/26/17	8,093	805	40	79.1	8,106	25	11	7,451	66	7,421
2008	2/22/17	8,148	805	40	79.5	8,176	25	8	7,708	68	7,667
1026	2/20/17	8,173	805	39	79.0	8,191	25	10	7,609	68	7,568
1610	2/26/17	8,017	805	42	78.3	8,025	25	10	7,497	66	7,467
1036	2/26/17	8,220	805	40	78.3	8,233	25	7	7,884	66	7,854
1082	2/26/17	8,144	805	39	78.9	8,163	25	11	7,498	66	7,468
622	2/20/17	8,015	805	34	79.7	8,061	25	12			
							25-A-2425	11			
							-B-2494	11			
							-C-2403	12			
916	2/20/17	8,059	805	30		8,117		12	7,222	68	7,183
953	2/20/17	8,060	805	42	79.7	8,063	25	10	7,503	68	7,463
1114	2/20/17	8,136	805	39	79.3	8,145	25	11	7,421	68	7,381
1370	2/20/17	8,088	805	39	79.6	8,106	25	11	7,437	68	7,397
1384	2/20/17	8,092	805	40	79.2	8,105	25	10	7,530	68	7,490
1619	2/20/17	8,016	805	39	78.0	8,039	25	11	7,450	68	7,410
629	2/26/17	7,604	805	38	78.5	7,642	25	11	7,426	68	7,393
							25-A-2283	12			
							25-B-2359	10			
							25-C-2445	6			
									7,087	66	7,059

#—Transferred from GRCX #1516—account leaking.





MAR.—1917.

Car number and Initial. All cars are GRCX cars.	THEIR BILLING.		OUR RECEIPTS.		Net Gallons.
	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp. Gravity. Color.	
449	3/2/17	7,060	805	32° 80.7	6,842
168	3/7/17	7,016	805	39 79.7	6,240
934	3/2/17	8,061	805	40 79.0	7,829
1066	3/2/17	8,158	805	39 79.4	7,565
1156	3/2/17	8,130	805	40 78.8	7,491
1500	3/2/17	12,029	805	38 79.0	11,474
620	3/2/17	8,018	805	40 78.6	
				19-A-2564	
				25-B-2604	
				20-C-2447	
621	3/4/17	8,005	805	42 79.8	7,585
				-A-2542	
				-B-2633	
				-C-2503	
1207	3/4/17	8,090	805	50 80.2	7,780
1331	3/4/17	8,092	805	49 79.9	7,931
1611	3/7/17	8,017	805	50 79.1	7,686
1613	3/7/17	8,017	805	48 79.5	7,763
2025	3/7/17	8,153	805	40 79.3	7,763
1271	3/2/17	8,095	805	46 79.1	7,703
900	3/7/17	8,055	805	34 80.3	7,861
					7,489

1211 #	3/14/17	8,143	805	32	80.0	8,198	25	7	7,762	68	7,721
1150	3/13/17	8,130	805	36	77.7	8,155	25	12	7,337	68	7,298
1220	3/7/17	8,096	805	34	79.8	8,140	25	10	7,537	62	7,527
1225	3/7/17	8,095	805	34	80.0	8,139	25	8	7,693	62	7,683
1337	3/7/17	8,095	805	36	80.0	8,128	25	6	7,832	62	7,822
1385	3/13/17	8,092	805	41	77.0	8,099	25	12	7,364	68	7,325
1035	3/7/17	8,239	805	34	78.0	8,284	25	3	8,143	68	8,100
1505	3/7/17	12,023	805	33	79.1	12,118	25	4	11,841	68	11,778
1021	3/13/17	8,148	805	33	76.5	8,199	25	12	7,415	68	7,375
911	3/7/17	8,055	805	32	78.8	8,111	25	5	7,854	68	7,812
913	3/7/17	8,056	805	32	79.0	8,112	25	2	8,004	68	7,961
916	3/7/17	8,059	805	32	79.8	8,115	25	5	7,858	68	7,816
1042	3/7/17	8,185	805	32	79.8	8,241	25	4	8,038	68	7,994
1065	3/7/17	8,131	805	30	78.5	8,197	25	4	7,985	68	7,942
1209	3/7/17	8,092	805	32	78.8	8,147	25	6	7,829	68	7,787
1610	3/7/17	8,017	805	30	79.6	8,088	25	4	7,883	68	7,841
1061	3/7/17	8,180	805	38	79.6	8,204	25	6	7,914	68	7,872
1155	3/7/17	8,130	805	37	79.5	8,160	25	4	7,971	68	7,928
1607	3/7/17	8,016	805	38	79.7	8,045	25	4	7,882	68	7,840
1006	3/13/17	8,128	805	39	78.4	8,146	25	12	7,396	68	7,357
1024	3/13/17	8,145	805	40	78.9	8,159	25	10	7,583	68	7,543
1082	3/13/17	8,144	805	40	77.8	8,157	25	12	7,411	68	7,371
1178	3/13/17	8,130	805	40	77.4	8,134	25	10	7,521	68	7,481
242	3/13/17	6,517	805	43	77.1	6,521	25	10	6,009	68	5,977
335	3/13/17	7,054	805	44	78.1	7,039	25	10	6,526	68	6,491

#---Transferred from GRCX #1030.





332	3/23/17	7,065	805	38	79.2	7,056	1' 3	6,114	72	6,065
1029	3/20/17	8,225	805	38	79.3	8,249	10	7,657	68	7,616
1064	3/20/17	8,144	805	38	78.8	8,167	1 2	7,229	72	7,171
428	3/17/17	8,175	805	50	78.1	8,084	10	7,611	72	7,550
1052	3/20/17	8,085	805	50	79.4	8,044	8	7,683	68	7,642
1237	3/21/17	8,099	805	48	78.0	8,069	10"	7,540	72	7,480
2012	3/21/17	8,147	805	48	78.3	8,132	10	7,537	72	7,477
1112	3/20/17	8,132	805	42	78.5	8,125	9	7,610	68	7,569
NOX8024#	3/23/17	8,130	805	40	78.7	8,134	1' 7	6,758	72	6,704
1272	3/20/17	8,093	805	41	78.5	8,105	10	7,539	68	7,499
2014	3/20/17	8,148	805	42	80.4	8,170	10	7,538	68	7,498
2016	3/20/17	8,153	805	40	76.9	8,181	10	7,542	68	7,502
251	3/20/17	6,510	805	46	78.3	6,503	11	5,928	68	5,896
1049	3/20/17	8,112	805	48	80.3	8,082	8	7,709	68	7,668
1111	3/23/17	8,137	805	47	80.0	8,103	11	7,438	72	7,378
2022	3/20/17	8,152	805	48	78.6	8,137	10	7,541	68	7,501
328	3/23/17	7,062	805	40	78.8	7,042	1 2	6,201	72	6,151
426	3/23/17	8,180	805	40	79.3	8,141	1 2	7,261	72	7,203
1036	3/23/17	8,220	805	40	80.2	8,233	1 3	7,199	72	7,141
1229	3/23/17	8,086	805	40	76.6	8,099	11 3/4	7,380	72	7,321
218	3/23/17	6,542	805	40	79.5	6,563	1 6	5,357	72	5,314
2015	3/23/17	8,151	805	40	80.5	8,179	1 1	7,258	72	7,200
2025	3/23/17	8,153	805	40	79.8	8,181	1 2	7,974	72	7,910
1027	3/23/17	8,179	805	42	78.9	8,181	1 2	7,260	72	7,202
1083	3/23/17	8,140	805	41	78.3	8,147	10	7,578	72	7,517

#—Transferred from GRCX 1144.



427	3/20/17	8,137	805	50	79.5	8,045	25	8	7,733	70	7,681
251	3/30/17	6,510	805	49	78.6	6,491	25	10	6,004	70	5,964
329	3/20/17	7,049	805	50	78.3	6,980	25	8	6,668	70	6,624
915	3/20/17	8,057	805	50	79.5	8,017	25	8	7,657	70	7,606
1150	3/30/17	8,130	805	49	78.9	8,086	25	8	7,691	70	7,640
1211	3/30/17	8,093	805	50	78.3	8,052	25	8	7,691	70	7,640
1239	3/30/17	8,099	805	50	78.7	8,058	25	10	7,540	70	7,490
1718	3/30/17	8,103	805	50	79.0	8,063	25	8	7,704	70	7,653
434	3/30/17	8,180	805	60	80.7	8,034	25	6	7,914	70	7,861
1369	3/30/17	8,092	805	60	80.1	7,998	25	6	7,829	70	7,777
1021	3/30/17	8,148	805	45	80.0	8,134	25	12	7,415	70	7,366
1624	3/30/17	8,014	805	46	79.4	8,001	25	10	7,494	70	7,444
								<hr/>			
								900,350		839,514	

All cars are GRCX  
cars except as noted.

Their billing. . . . .	900,350
Our receipts. . . . .	839,514
<hr/>	
Difference. . . . .	60,836





APR., 1917—Continued.

## THEIR BILLING.

Into

Car number and Initials.	Date Unloaded.	Gross Gallons.	No.	Temp.	Gravity.	Gallons.	Color.	Outage.	Gross Gallons	Temp.	Net Gallons.
All car int.											
GRCX											
1368	4/8/17	8,093	805	46°	79.5	8,074	25	8"	7,691	68°	7,650
408	4/12/17	8,136	805	48	78.0	8,054	25	10	7,575	68	7,535
1156	4/12/17	8,130	805	48	77.6	8,091	25	10	7,521	68	7,481
1621	4/13/17	8,016	805	48	79.0	7,992	25	6	7,772	68	7,731
445	4/13/17	8,140	805	55	76.9	8,021	25	6	7,075	68	7,037
1143	4/13/17	8,371	805	54	78.0	8,271	25	5	8,145	68	8,102
236	4/12/17	6,509	805	50	78.0	6,486	25	5	6,326	68	6,292
410	4/12/17	8,153	805	50	76.0	8,087	25	12	7,419	66	7,389
911	4/12/17	8,055	805	50	75.1	8,015	25	8	7,655	68	7,614
1015	4/12/17	8,183	805	52	78.1	8,131	25	8	7,776	68	7,735
1049	4/12/17	8,112	805	50	75.6	8,071	25	7	7,780	68	7,739
1112	4/12/17	8,132	805	52	76.8	8,072	25	10	7,523	68	7,483
1272	4/12/17	8,098	805	50	78.0	8,057	25	7	7,767	68	7,726
1319	4/12/17	8,096	805	50	76.3	8,055	25	6	7,833	68	7,791
2028	4/12/17	8,153	805	52	74.5	8,116	25	7	7,792	68	7,750
1228	4/12/17	8,089	805	46	76.6	8,070	25	8	7,687	68	7,646
1613	4/12/17	8,017	805	46	77.1	8,004	25	9	7,571	66	7,541
2019	4/12/17	8,147	805	46	76.6	8,143	25	7	7,786	68	7,744
1952	4/17/17	8,009	805	52	78.0	7,949	25	6	7,747	70	7,695

1953	4/17/17	8,010	805	52	76.9	7,950	25	8	7,609	70	7,558
1954	4/17/17	8,007	805	54	76.0	7,937	25	10	7,450	70	7,400
159	4/13/17	8,052	805	52	76.8	7,956	25	6	7,799	68	7,757
449	4/19/17	7,060	805	52	75.7	6,985	25	11	6,454	74	6,394
1033	4/13/17	8,173	805	53	78.1	8,116	25	4	8,027	68	7,984
1111	4/13/17	8,137	805	52	77.9	8,077	25	3	8,034	68	7,991
1132	4/13/17	8,140	805	53	77.9	8,074	25	4	7,981	68	7,938
1277	4/13/17	8,093	805	52	77.9	8,042	25	5	7,891	68	7,849
1616	4/13/17	8,017	805	52	78.4	7,972	25	5	7,830	68	7,788
1949	4/17/17	8,005	805	49	75.0	7,961	25	10	7,449	70	7,393
1950	4/17/17	8,013	805	50	74.6	7,964	25	8	7,612	70	7,561
1951	4/17/17	8,011	805	50	75.7	7,962	25	10	7,454	70	7,404
368	4/17/17	7,076	805	50	76.3	7,011	25	8	6,694	70	6,649
924	4/17/17	8,059	805	52	75.9	8,003	25	11	7,420	70	7,371
1034	4/17/17	8,201	805	52	75.9	8,149	25	8	7,793	70	7,741
1065	4/19/17	8,131	805	49	74.1	8,096	25	11	7,486	74	7,415
1080	4/17/17	8,185	805	52	74.0	8,133	25	10	7,620	70	7,569
1247	4/17/17	8,093	805	50	74.6	8,052	25	7	7,762	70	7,710
1602	4/17/17	8,023	805	48	77.0	7,999	25	10	7,503	70	7,453
1611	4/17/17	8,017	805	46	76.4	8,004	25	6	7,773	70	7,721
1006	4/17/17	8,128	805	46	74.4	8,087	25	8	7,724	70	7,673
2029	4/19/17	8,152	805	50	75.3	8,099	25	10	7,541	74	7,471
328	4/19/17	7,062	805	50	74.7	7,019	25	12	6,373	74	6,313
335	4/19/17	7,054	805	50	74.6	7,011	25	11	6,448	74	6,388
2006	4/19/17	8,146	805	49	75.0	8,102	25	10	7,536	74	7,466
1945	4/18/17	8,014	805	48	74.5	7,975	25	10	7,461	72	7,401
1947	4/18/17	8,013	805	48	74.6	7,974	25	8	7,612	72	7,551



APR., 1917—Continued.

## THEIR BILLING.

Car number and Initials.	Date Unloaded.	Into Tank		Temp.	Gravity.	Gallons.	Color.	Outage.	OUR RECEIPTS.		Temp.	Net Gallons.
		Gross	Gallons.						Gross	Gallons.		
All car Int.												
GRCX.												
1948	4/18/17	8,006	805	48°	74.5	7,967	25	10"	7,450		72°	7,390
1220	4/18/17	8,096	805	44	74.5	8,087	25	7	7,765		72	7,703
1502	4/23/17	12,029	805	46	75.1	12,021	25	11	11,212		74	11,107
985	4/19/17	8,055	805	46	75.6	8,037	25	10	7,499		74	7,429
1251	4/19/17	8,096	805	46	74.7	8,077	25	11	7,454		74	7,384
1178	4/27/17	8,130	805	46	79.3	8,102	18	10	7,521		72	7,461
1209	4/28/17	8,092	805	46	78.8	8,073	25	10	7,534		76	7,454
1205	4/26/17	8,082	805	46	75.0	8,063	25	10	7,524		76	7,444
1946	4/18/17	8,011	805	48	74.5	7,972	25	8	7,610		72	7,549
1955	4/18/17	8,011	805	52	75.6	7,956		5	7,810		72	7,749
1956	4/18/17	8,009	805	52	75.5	7,949	25	7	7,679		72	7,618
1957	4/18/17	8,007	805	50	75.7	7,958	25	6	7,745		72	7,685
1958	4/18/17	8,007	805	52	75.6	7,947	25	7	7,677		72	7,616
1959	4/18/17	8,005	805	52	75.2	7,945	25	7	7,675		72	7,614
1960	4/18/17	8,008	805	53	75.2	7,943	25	7	7,678		72	7,617
1965	4/18/17	8,013	805	51	76.0	7,958	25	8	7,612		72	7,551
1387	4/18/17	8,095	805	52	74.9	8,044	25	10	7,536		72	7,476
305	4/23/17	6,364	805	56	75.2	6,300	25	11	7,795		74	5,741

1066#	4/28/17	8,153	805	54	74.3	8,039	25	10	7,567	74	7,496
1066	4/23/17	8,158	805	56	74.5	8,085	25	11	7,511	74	7,441
1207	4/23/17	8,090	805	54	75.6	8,028	25	10	7,532	74	7,462
2010	4/23/17	8,150	805	54	75.4	8,078	25	12	7,355	74	7,286
2013	4/23/17	8,147	805	56	75.3	8,065	25	12	7,353	74	7,284
437	4/23/17	8,137	805	50	74.0	8,044		11	7,491	74	7,421
1026	4/27/17	8,173	805	51	75.2	8,127	25	8	7,767	72	7,705
1271	4/23/17	8,095	805	50	74.9	8,054	25	10	7,536	74	7,466
1384	4/23/17	8,092	805	50	75.2	8,051	25	11	7,450	74	7,380
1609	4/23/19	8,023	805	50	74.1	7,989	24	10	7,503	74	7,433
1624	4/23/17	8,014	805	50	74.8	7,980	25	11	7,418	74	7,349
2016	4/23/17	8,153	805	48	74.5	8,113	25	10	7,542	74	7,442
1355	4/24/17	8,090	805	56	75.6	8,017	25	10	7,532	76	7,452
1963	4/24/17	8,009	805	62	78.3	7,892	21	9	7,529	76	7,449
1964	4/24/17	8,009	805	60	78.2	7,907	21	11	7,369	76	7,290
1083	4/23/17	8,140	805	60	75.0	8,046	25	10	7,578	74	7,507
1237	4/23/17	8,099	805	60	75.5	8,005	25	12	7,370	74	7,301
1961	4/27/17	8,008	805	60	77.8	7,906	17	8	7,607	72	7,546
1962	4/27/17	8,011	805	61	77.7	7,904	19	8	7,610	72	7,549
1011	4/27/17	5,170	805	60	74.9	8,075	25	5	7,967	72	7,903
1462	4/27/17	8,093	805	60	74.5	7,999	25	7	7,762	74	7,692
1010	4/27/17	8,195	805	60	74.7	8,059	25	7	7,791	72	7,729
2022	4/27/17	8,152	805	58	74.4	8,059	25	7	7,791	72	7,729
1023	4/28/17	8,175	805	62	74.4	8,069	25	8	7,769	76	7,686
1142	4/27/17	8,387	805	58	74.6	8,291	25	7	8,015	72	7,951

#—Transferred from GRCX #427



Their billing. . . . .	1,164,303
Our receipts, . . . . .	1,098,604
Difference. . . . .	<hr/> 65,699

MAY—1917.

THEIR BILLING.				OUR RECEIPTS.			
Car number and Initials.	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp.	Gravity.	Net Gallons.	
GRCX 1951 900 1384 1945 1946 1948 1865 1227 1973 1976 445# 335 434 1387 1609 1947 1956 1938 1385 1975 2014	5/16/17	8,011	805	55°	76.1	7,958	Color. 25
	5/17/17	8,055	805	62	74.0	7,954	Net Gallons. 7,157
	5/21/17	8,092	805	62	75.4	7,990	Outage. Gallons. 8
	5/16/17	8,014	805	60	76.2	7,935	Temp. 74°
	5/16/17	8,011	805	64	73.2	7,917	74
	5/16/17	8,006	805	62	75.7	7,920	74
	5/16/17	8,013	805	64	73.8	7,379	74
	5/17/17	8,088	805	56	76.1	8,057	74
	5/17/17	8,009	805	52	76.5	7,973	74
	5/17/17	8,000	805	52	76.2	7,970	74
	5/25/17	8,173	805	60	74.9	8,132	76
	5/21/17	7,054	805	52	75.1	6,979	76
	5/21/17	8,180	805	54	74.8	8,066	76
	5/21/17	8,095	805	54	75.2	8,033	76
	5/21/17	8,023	805	52	74.9	7,978	76
	5/21/17	8,013	805	54	74.9	7,966	76
	5/21/17	8,009	805	52	75.9	7,973	76
	5/21/17	8,007	805	54	74.4	7,961	76
	5/21/17	8,092	805	54	74.4	8,030	76
	5/25/17	8,008	805	58	75.4	7,941	74
	5/25/17	8,148	805	58	75.8	8,079	74

1174	5/25/17	8,130	805	58	74.6	8,038	25	1	3	7,120	74	7,054
1038	5/21/17	8,151	805	54	75.2	8,088	25		10	7,589	76	7,509
332	5/21/17	7,065	805	52	74.6	7,012	25		12	6,376	76	6,308
408	5/21/17	8,136	805	52	75.2	8,060	25		10	7,575	76	7,494
960	5/21/17	8,061	805	52	75.9	8,010	25		10	7,505	76	7,425
1229	5/23/17	8,086	805	54	75.7	8,024	25		10	7,528	74	7,458
1602	5/21/17	8,023	805	52	75.0	7,978	25		12	7,346	76	7,268
368	5/29/17	7,076	857	62	70.6	7,019	25	1	2	6,213	78	6,138
1015	5/29/17	8,183	857	74	72.2	8,131	25	1	2	7,263	78	7,176
1068	5/29/17	8,137	857	62	70.7	8,093	25	1	1	7,315	78	7,227
1080	5/29/17	8,185	857	62	74.3	8,141	25	1	3	7,168	78	7,082
1278	5/29/17	8,092	805	62	74.5	8,048	25	1	3	7,087	78	7,002
1225	5/25/17	8,095	805	58	76.2	8,012	25		11	7,453	74	7,384
1859	5/29/17	8,172	857	58	73.3	8,103	25	1	2	7,176	78	7,090
1971	5/25/17	8,006	805	57	73.8	7,944	25		10	7,406	74	7,337
1977	5/25/17	8,009	805	58	75.8	7,942	25		10	7,409	74	7,340
1955	5/23/17	8,011	805	62	76.9	7,921	25		6	7,727	74	7,655
1957	5/23/17	8,007	805	58	76.6	7,940	25		6	7,723	74	7,651
1961	5/23/17	8,008	805	56	75.6	7,951	25		6	7,725	74	7,653
1963	5/23/17	8,005	805	58	74.2	7,938	23		5	7,789	74	7,717
1966	5/23/17	8,006	805	56	75.7	7,948	25		7	7,651	74	7,580
1969	5/23/17	8,009	805	56	75.7	8,023	25		6	7,725	74	3,836
392	5/25/17	7,055	805	61	75.9	6,981	25	3'	0	3,873	74	3,836
924	5/25/17	8,059	805	61	75.7	8,002	25		10	7,503	74	7,433
1962	5/25/17	8,011	805	61	75.8	7,971	25		11	7,323	74	7,255

#—GRCX 445 transferred from GRCX 1033.





900	5/3/17	8,055	805	58	75.8	7,973	25	1'	1	7,241	76	7,164
1061	5/3/17	8,180	805	54	75.7	8,117	25	1	1	7,354	76	7,276
1132	5/3/17	8,140	805	53	75.2	8,098			8	7,700	76	7,618
1946	5/3/17	8,011	805	52	74.9	7,975	25	1	0	7,224	76	7,147
1948	5/3/17	8,006	805	52	75.2	7,970	25		10	7,402	76	7,323
1960	5/3/17	8,008	805	50	75.7	7,988	25		11	7,315	76	7,237
1965	5/3/17	8,013	805	52	74.9	7,977	25		10	7,409	76	7,330
426	5/3/17	8,180	805	54	75.1	8,066	25		10	7,616	76	7,535
960	5/3/17	8,061	805	58	75.5	7,980	25		11	7,422	76	7,343
1113	5/3/17	8,139	805	56	75.6	8,058	25		12	7,345	76	7,267
1945	5/3/17	8,014	805	56	75.3	7,957	25		8	7,578	76	7,497
328	5/3/17	7,062	805	48	77.3	7,028	25		9	6,609	70	6,565
1327	5/3/17	8,096	805	46	77.3	8,077	25		6	7,833	70	7,781
434	5/3/17	8,180	805	46	80.0	8,109	20		10	7,616	70	7,565
1229	5/3/17	8,086	805	56	80.2	8,013	19		4	7,941	70	7,887
335	5/3/17	7,054	805	48	76.4	6,997	25		10	6,526	70	6,482
449	5/3/17	7,060	805	49	77.4	6,998	25		8	6,679	70	6,635
985	5/3/17	8,055	805	48	77.3	8,026	25		5	7,854	70	7,801
1153	5/3/17	8,130	805	54	78.2	8,033	25		6	7,842	70	7,790
1609	5/3/17	8,023	805	48	77.8	7,999	25		9	7,577	70	7,275
1956	5/3/17	8,009	805	52	77.4	7,973	25		5	7,791	70	7,739
1969	5/9/17	8,009	805	52	77.6	7,973	25		8	7,574	70	7,523
1270	5/9/17	8,088	805	54	73.2	8,026	25		10	7,530	70	7,480
1611	5/9/17	8,017	805	54	73.1	7,961	25		9	7,571	70	7,520
1616	5/9/17	8,017	805	54	73.8	7,961	25		8	7,642	70	7,591
1321	5/10/17	8,089	805	52	78.9	8,038	25		8	7,687	68	7,646
1144	5/9/17	8,130	805	61	73.7	8,023	25		10	7,521	70	7,471



1954	5/16/17	8,007	805	55	74.7	7,955	25	11	7,314	74	7,246
422	5/13/17	7,004	805	48	77.0	6,992	25	10	6,535	72	6,483
428	5/13/17	8,175	805	50	75.3	8,082	25	10	7,611	72	7,550
1178	5/13/17	8,130	805	50	76.7	8,080	25	11	7,432	72	7,373
620	5/13/17	8,018	805	50	76.0	7,978-A-2518	25	8			
					76.6	B-2603	25	8			
					76.2	C-2431	25	10	7,553	72	7,493
1083	5/13/17	8,140	805	51	77.2	8,094	25	10	7,578	72	7,518
1237	5/13/17	8,099	805	48	76.9	8,037	25	10	7,696	72	7,634
1368	5/13/17	8,093	805	48	77.6	8,063	25	8	7,691	72	7,629
956	5/11/17	8,059	805	46	77.0	8,041		8	7,658	68	7,617
1006	5/11/17	8,128	805	50	77.2	8,087		8	7,724	68	7,683
1148	5/11/17	8,130	805	52	76.7	8,070		6	7,842	68	7,801
1209	5/11/17	8,092	805	42	77.0	8,094		6	7,829	68	7,787
1247	5/16/17	8,093	805	44	75.8	8,084	25	10	7,535	74	7,465
1331	5/11/17	8,092	805	50	77.1	8,051		8	7,690	68	7,649
1366	5/11/17	8,093	805	51	76.9	8,047		8	7,691	68	7,650
2022	5/11/17	8,152	805	48	77.0	8,137		10	7,541	68	7,501
2024	5/11/17	8,148	805	48	76.7	8,133		10	7,538	68	7,498
1950	5/16/17	8,013	805	56	75.6	7,955	25	11	7,320	74	7,252
1113	5/31/17	8,139	805	64	74.5	8,061	25	11	7,440	78	7,351
1270	5/31/17	8,088	805	60	74.4	8,055	25	12	7,360	78	7,272
1327	5/31/17	8,096	805	58	75.2	8,074	25	11	7,454	78	7,365
2029	5/31/17	8,152	805	62	74.9	8,105	25	11	7,452	78	7,363

MAY, 1917—Continued.

THEIR BILLING				OUR RECEIPTS.				
Car number and Initials.	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp. Gravity.	Net Gallons.	Color.	Gross Outage. Gallons. Temp.	Net Gallons.
1132#		8,140		62°	8,052			
1355#		8,090		60	8,048			
1960#		8,008		60	7,972			
5/31/17	PR car 808#		805				2' 4" 5,677 78°	5,609
5/31/17	PR car 843#		805				3' 10" 3,457 78	3,416
								<u>1,016,789</u>
					<u>1,112,507</u>			

#—Pr cars 808 and 843 transferred from GRCX #1132, 1355 and 1960.

Their billing.....	1,112,507
Our receipts.....	1,016,789
Difference.....	<u>95,718</u>

# UNREFINED NAPHTHA FROM GYPSY OIL COMPANY—JUNE, 1917.

UNITED STATES OF AMERICA.

1345

Car Number and Initials.	THEIR BILLING.			OUR RECEIPTS.							Net Gallons.
	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp.	Color.	Net Gallons.	Gravity.	Outage.	Gross Gallons.	Temp.	
GRGX 1611	6/4/17	8,017	805	74°	18	7,943	70.7	6"	7,772	76°	7,689
1064	6/5/17	8,144	805	64	25	8,089	75.1	8	7,739	78	7,646
1366	6/9/17	8,093	805	63	25	8,044	71.4	8	7,691	80	7,589
1955	6/9/17	8,011	805	65	25	7,984	73.5	9	7,497	80	7,397
1957	6/9/17	8,007	805	62	25	7,996	73.5	10	7,407	80	7,308
1037	6/4/17	8,191	805	56	25	8,179	74.7	10	7,626	76	7,544
1850	6/4/17	8,175	805	56	25	8,197	74.7	8	7,734	76	7,651
1851	6/4/17	8,173	805	56	25	8,195	74.5	6	7,884	76	7,800
1983	6/4/17	8,006	805	56	25	8,027	74.0	8	7,574	76	7,493
1205	6/5/17	8,082	805	56	25	8,051	72.9	10	7,524	78	7,434
1245	6/5/17	8,096	805	56	25	8,065	72.0	11	7,454	78	7,365
1247	6/5/17	8,093	805	56	25	8,062	72.3	10	7,535	78	7,445
1271	6/5/17	8,095	805	56	25	8,064	73.6	8	7,693	78	7,601
1852	6/4/17	8,170	805	60	25	8,170	75.1	6	7,881	76	7,797
1853	6/4/17	8,172	805	60	25	8,172	74.0	6	7,883	76	7,799
1854	6/4/17	8,176	805	59	25	8,181	74.7	7	7,814	76	7,730
1858	6/4/17	8,173	805	59	25	8,178	74.7	8	7,732	76	7,649
1956	6/5/17	8,009	805	60	25	8,009	75.9	8	7,577	78	7,486
1961	6/5/17	8,008	805	62	25	7,997	74.9	6	7,725	78	7,632
1963	6/5/17	8,005	805	60	25	8,005	75.3	8	7,573	78	7,482
1969	6/5/17	8,009	805	62	25	7,998	73.6	8	7,577	78	7,486



1786	6 7/17	8,100	805	56	25	8,070	72.1	10	7,547	78	7,456
428	6/7/17	8,175	805	52	25	8,123	73.9	1	7,256	78	7,169
1083	6/7/17	8,140	805	54	25	8,120	74.6	11	7,494	78	7,404
159	6/11/17	8,052	805	72	17	7,941	70.7	8	7,666	84	7,543
1333	6/9/17	8,085	805	60	25	8,052	75.0	8	7,683	80	7,581
1946	6/14/17	8,011	805	61	25	8,006	73.9	8	7,578	80	7,477
1948	6/7/17	8,006	805	62	25	7,996	73.9	9	7,492	78	7,402
1953	6/7/17	8,010	805	59	25	8,015	74.6	8	7,577	78	7,486
1954	6/7/17	8,007	805	61	25	8,002	74.7	10	7,407	78	7,318
1965	6/7/17	8,013	805	61	25	8,008	73.0	9	7,499	78	7,409
1968	6/7/17	8,011	805	60	25	8,011	72.0	10	7,411	78	7,322
1978	6/7/17	8,014	805	60	25	8,014	75.1	8	7,581	78	7,490
1979	6/7/17	8,015	805	62	25	8,004	73.8	10	7,415	78	7,326
1982	6/7/17	8,011	805	62	25	8,000	72.9	8	7,578	78	7,487
2025	6/7/17	8,153	805	60	25	8,117	72.8	11	7,453	78	7,364
150	6/9/17	8,000	805	61	25	7,962	75.3	11	7,366	80	7,268
1232	6/11/17	8,095	805	62	25	8,051	72.8	11	7,453	84	7,334
1732	6/9/17	8,103	805	61	25	8,065	74.3	10	7,550	80	7,450
1774	6/9/17	8,100	805	63	25	8,051	75.2	8	7,701	80	7,599
1788	6/9/17	8,098	805	60	25	8,065	73.5	10	7,545	80	7,445
960	6/11/17	8,061	805	60	25	8,028	74.3	12	7,336	84	7,219
1251	6/11/17	8,096	805	58	25	8,074	74.8	10	7,537	84	7,416
1966	6/11/17	8,006	805	58	25	8,017	73.4	11	7,318	84	7,201
2014	6/11/17	8,148	805	62	25	8,101	74.0	10	7,538	84	7,417
1026	6/11/17	8,173	805	67	25	8,101	74.1	10	7,609	84	7,487



## UNDEFINED NAPHTHA FROM GYPSY OIL COMPANY—JUNE, 1917.—Continued.

## THEIR BILLING.

## OUR RECEIPTS.

Car Number and Initials.	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp.	Color.	Net Gallons.	Gravity.	Outage.	Gross Gallons.	Temp.	Net Gallons.
GRCX 1034	6/11/17	8,201	805	64°	25	8,145	74.0	11"	7,551	84°	7,430
1377	6/11/17	8,095	805	64	25	8,040	74.2	10	7,536	84	7,415
1378	6/11/17	8,093	805	59	25	8,065	74.7	10	7,535	84	7,414
1859	6/11/17	8,172	805	60	25	8,172	73.3	8	7,731	84	7,607
2022	6/11/17	8,152	805	63	25	8,100	73.6	10	7,541	84	7,420
1706	6/14/17	8,098	805	66	25	8,033	74.9	10	7,545	80	7,445
1743	6/14/17	8,097	805	66		8,032	74.4	8	7,698	80	7,596
1984	6/14/17	8,009	805	66		7,977	74.7	8	7,577	80	7,476
1270	6/16/17	8,088	805	62	25	8,044	75.0	10	7,530	88	7,390
1775	6/11/17	8,107	805	63	25	8,058	75.0	8	7,707	88	7,564
1959	6/16/17	8,005	805	66	25	7,973	75.5	4	7,849	88	7,703
1981	6/16/17	6,008	805	64	25	7,987	77.3	7	7,653	88	7,511
1945	6/16/17	8,014	805	63	25	7,998		6	7,730	88	7,586
985	6/11/17	8,055	805	63	25	8,006	74.4	9	7,579	84	7,458
1209	6/14/17	8,092	805	60	25	8,059	74.4	8	7,690	80	7,588
2029	6/16/17	8,153	805	60	25	8,117	74.8	10	7,541	88	7,401
1400	6/14/17	8,093	805	58	25	8,071	75.0	8	7,691	80	7,589
1437	6/14/17	8,093	805	62		8,049	75.7	7	7,762	80	7,659
1040	6/14/17	8,209	805	64	25	8,153	75.9	8	7,801	80	7,697
1268	6/14/17	8,095	805	64	25	8,040	76.8	8	7,693	80	7,591
1276	6/14/17	8,095	805	64	25	8,040	76.4	8	7,693	80	7,591
1865	6/14/17	8,175	805	64		8,153	75.8	7	7,813	80	7,709

1865	6/14/17	8,174	805	64	25	8,152	76.3	10	7,562	80	7,461
1871	6/16/17	8,172	805	64	25	8,150	75.8	6	7,883	88	7,736
2010	6/14/17	8,150	805	63	25	8,098	76.0	10	7,540	80	7,446
1206	6/31/17	8,089	805	63	25	8,040	74.7	8	7,687	84	7,564
1201	6/18/17	8,082	805	64	25	8,028	74.1	8	7,680	80	7,526
1225	6/18/17	8,095	805	64	25	8,040	74.0	8	7,693	90	7,539
1624	6/18/17	8,014	805	64	25	7,961	73.8	8	7,639	90	7,486
1727	6/18/17	8,101	805	63	25	8,052	73.4	9	7,626	90	7,473
1852	6/18/17	8,170	805	64	25	8,148	73.5	10	7,558	90	7,407
1854	6/18/17	8,176	805	64	25	8,154	75.4	8	7,734	90	7,579
1856	6/18/17	8,178	805	63	25	8,162	73.5	8	7,736	90	7,581
1858	6/18/17	8,173	805	63	24	8,157	73.5	8	7,732	90	7,577
1950	6/18/17	8,013	805	64	25	7,992	74.2	10	7,413	90	7,265
1951	6/18/17	8,011	805	64	25	7,990	73.9	8	7,578	90	7,426
1850	6/18/17	8,175	805	60	25	8,175	76.3	8	7,734	90	7,579
1853	6/18/17	8,172	805	60	25	8,172	77.5	10	7,560	90	7,409
309	6/19/17	6,662	805	62	25	6,607	74.3	10	6,163	86	6,056
1153	6/21/17	8,130	805	62	25	8,003	74.4	11	7,432	84	7,313
1851	6/18/17	8,173	805	64	25	8,151	73.3	9	7,648	90	7,495
1860		8,175		65	25	8,148	75.5	8	7,734	84	7,610
1861	6/16/17	8,170	805	63	25	8,154	74.9	6	7,881	88	7,734
1862	6/20/17	8,173	805	66	25	8,140	74.3	7	7,811	84	7,686
1864	6/16/17	8,173	805	65	25	8,146	75.6	5	7,952	88	7,804
1869	6/16/17	8,170	805	65	25	8,143	75.5	6	7,881	88	7,734
1870	6/16/17	8,171	805	64	25	8,149	75.3	5	7,950	88	7,802
1349	6/19/17	8,090	805	56	25	8,059	70.7	10	7,532	86	7,402



1351	6/21/17	8,093	805	52	25	8,084	76.0	8	7,691	84	7,568
1983	6/21/17	8,006	805	52	25	8,038	75.1	10	7,406	84	7,288
328	6/21/17	7,062	805	54	25	7,021	75.1	11	6,455	84	6,352
1068	6/21/17	8,137	805	56	25	8,107	75.5	6	7,873	84	7,747
1740	6/21/17	8,097	805	56	25	8,067	76.0	8	7,698	84	7,575
1786	6/21/17	8,100	805	53	25	8,086	75.5	8	7,701	84	7,578
368	6/21/17	7,076	805	62	25	7,018	71.5	8	6,694	84	6,587
1174	6/21/17	8,130	805	64	25	8,053	71.5	10	7,521	84	7,401
1952	6/26/17	8,009	805	64	25	7,953	71.0	8	7,577	88	7,436
1732	6/23/17	8,103	805	60	25	8,052	75.4	8	7,704	84	7,581
1963	6/23/17	8,005	805	60	25	8,005	75.1	8	7,573	84	7,452
2016	6/23/17	8,153	805	59	25	8,102	75.3	10	7,542	84	7,421
1969	6/26/17	8,009	805	74	18	7,935	70.3	8	7,577	88	7,436
1978	6/26/17	8,014	805	74	18	7,940	70.8	8	7,581	88	7,440
1855	6/23/17	8,179	805	54	25	8,212	73.7	8	7,737	84	7,613
1955	6/23/17	8,011	805	56	25	8,032	74.4	8	7,578	84	7,457
1957	6/23/17	8,007	805	54	25	8,039	75.4	10	7,407	84	7,288
2006	6/23/17	8,146	805	60	25	8,090	74.1	8	7,706	84	7,583
1029	6/23/17	8,225	805	54	25	8,224	75.6	10	7,657	84	7,534
1113	6/23/17	8,139	805	56	25	8,105	74.6	8	7,699	84	7,576
1609	6/23/17	8,023	805	58	25	8,003	74.9	10	7,502	84	7,382
1948	6/26/17	8,006	805	72	18	7,943	70.3	8	7,574	88	7,433
1953	6/23/17	8,010	805	79	18	7,910	70.7	8	7,577	84	7,456
1954	6/23/17	8,007	805	76	19	7,922	71.1	8	7,575	84	7,454
428	6/26/17	8,175	805	58	25	8,091	70.2	10	7,611	88	7,469
2024	6/26/17	8,148	805	60	25	8,092	71.2	10	7,538	88	7,398
2025	6/27/17	8,153	805	59	25	8,102	72.1	8	7,713	86	7,580

## UNDEFINED NAPHTHA FROM GYPSY OIL COMPANY—JUNE, 1917.—Continued.

Car Number and Initials.	THEIR BILLING.			OUR RECEIPTS.							
	Date Unloaded.	Gross Gallons.	Into Tank No.	Temp.	Color.	Net Gallons.	Gravity.	Outage.	Gross Gallons.	Temp.	Net Gallons.
1083	6/26/17	8,140	805	70°	25	8,054	69.7	8"	7,735	88°	7,591
1968	9/26/17	8,011	805	72	17	7,948	70.7	8	7,578	88	7,437
1232	6/27/17	8,095	805	62	25	8,051	77.5	8	7,693	86	7,560
1974	6/27/17	8,007	805	66	25	7,975	77.5	8	7,575	86	7,444
1227	6/26/17	8,088	805	68	25	8,012	70.9	7	7,757	88	7,613
1271	6/26/17	8,095	805	70	25	8,008	70.2	10	7,536	88	7,396
1278	6/26/17	8,092	805	70	25	8,005	70.3	10	7,534	88	7,394
1327	6/26/17	8,096	805	70	25	8,009	70.9	8	7,694	88	7,551
426	6/27/17	8,180	805	60	25	8,107	75.5	8	7,773	86	7,639
1116	6/27/17	8,090	805	60	25	8,034	75.6	7	7,732	86	7,598
1774	6/27/17	8,100	805	60	25	8,067	75.2	6	7,839	86	7,703
335	6/26/17	7,654	805	74		6,958		11	6,448	88	6,328
1034	6/26/17	8,172	805	74	25	8,125	70.6	8	7,793	88	7,648
1859	6/27/17	8,172	805	70	25	8,082	71.4	10	7,560	86	7,429
1966	6/27/17	8,006	805	70	25	7,918	69.9	8	7,674	88	7,433
2022	6/27/17	8,152	805	70	25	8,062	72.0	8	7,712	86	7,579
1377	6/27/17	8,095	805	64	25	8,040	75.5	8	7,693	86	7,560
1616	6/27/17	8,017	805	64	25	7,965	76.2	8	7,642	86	7,510
1738	6/30/17	8,105	805	64	25	8,048	73.1	8	7,704	88	7,563
1747	6/30/17	8,103	805	63	25	8,054	73.7	8	7,704	88	7,561
1731	6/30/17	8,101	805	65	25	8,041	73.1	7	7,773	88	7,628
1251	6/30/17	8,096	805	81	18	7,984	70.3	7	7,765	88	7,621

2014	6/30/17	8,148	805	79	16	8,046	70.3	10	7,538	88	7,398
960	6/30/17	8,061	805	81	18	7,931	69.9	8	7,660	88	7,518
985	6/30/17	8,055	805	81	19	7,925	70.5	8	7,655	88	7,513
1378	6/30/17	8,093	805	82	19	7,976	70.6	8	7,691	88	7,548
						<u>1,534,063</u>					<u>1,430,666</u>

Their billing. . . . .	1,534,063
Our receipts. . . . .	1,430,666
Difference. . . . .	<u>103,397</u>

It is stipulated by the parties that the succeeding months of this statement bear the heading "Un-refined naphtha", and that printing of the balance of the statement be dispensed with.

**Government's Exhibit 81.**

(Received May 5 1917 9 AM Gen'l Auditor's Office)

**GULF REFINING COMPANY**

George H. Tabor, Vice President

Port Arthur, Texas

Refineries:

Port Arthur, Texas; Fort Worth, Texas

A. D. Morgan,

Local Auditor

May 2, 1917.

Mr. L. S. Haskell, General Auditor,  
Gulf Refining Company, Pittsburgh, Pa.

Dear Sir: Our April Yield Statement will show, as a receipt, 146 cars of Gasoline from Kiefer, at a total of 1,098,604 gallons, against a billing from the Gypsy Oil Company—Gasoline Department—of 1,164,303 gallons, a difference of 65,699 gallons, which is accounted for by the fact that the cars arrived here with very large outages.

Attached you will find a list of the cars, showing outages, our receipts, and their billing.

Yours very truly,

P  
cc enc—Mr. Donovan.

(Signed) A. D. Morgan

**Government's Exhibit 82.****RECEIPTS OF KIEFER GASOLINE, APRIL, 1917.**

THEIR BILLING				OUR RECEIPTS			
Car No.	Gross Gal.	Temp.	Net Gal.	Outage	Gross Gal.	Temp.	Net Gal.
960	8,061	40°	8,074	18"	6,762	66°	6,735
1002	8,174	50	8,133	7	7,840	66	7,809
1620	8,020	58	7,975	9	7,574	66	7,544
607	8,016	46	7,997	10-A-2461	7,408	66	7,378
				11-B-2478			
				11-C-2469			
953	8,060	46	8,042	7	7,730	66	7,699
1011	8,170	46	8,151	8	7,764	66	7,333
1331	8,092	46	8,073	8	7,690	66	7,659
2010	8,150	46	8,146	8	7,745	66	7,714
410	8,153	44	8,119	10	7,590	68	7,550
1010	8,195	43	8,192	7	7,860	66	7,829
1038	8,151	43	8,148	8	7,746	66	7,715
1613	8,017	44	8,014	7	7,707	68	7,666
1277	8,093	50	8,052	7	7,762	66	7,731
1602	8,023	50	7,989	7	7,715	66	7,684



## Receipts of Kiefer Gasoline, April, 1917.—Continued.

THEIR BILLING				OUR RECEIPTS			
Car No.	Gross Gal.	Temp.	Net Gal.	Outage	Gross Gal.	Temp.	Net Gal.
229	6,477	52°	6,446	8"	6,113	70°	6,072
1321	8,089	58	8,006	6	7,826	68	7,784
1370	8,088	58	8,005	10	7,530	68	7,490
1378	8,093	52	8,042	10	7,535	68	7,495
622	8,015	54	7,954	10-A-2481	7,462	70	7,412
				10-B-2522			
				10-C-2459			
629	7,604	54	7,562	10-A-2358	7,116	70	7,069
				8-B-2411			
				10-C-2347			
1074	8,091	54	8,029	8	7,691	70	7,544
1237	8,099	54	8,037	10	7,540	70	7,490
1619	8,016	53	7,966	8	7,641	70	7,590
2012	8,147	54	8,099	8	7,707	70	7,656
1462	8,093	50	8,052	10	7,535	70	7,485
924	8,059	54	7,998	6	7,797	70	7,745
934	8,061	54	7,999	7	7,731	70	7,679
1034	8,201	56	8,128	7	7,866	70	7,814
1080	8,185	56	8,112	6	7,919	70	7,866
1611	8,017	54	7,962	7	7,709	70	7,658
1113	8,139	56	8,057	5	7,919	68	7,877
2020	8,149	56	8,091	7	7,788	70	7,736
168	7,016	52	6,911	7	6,702	68	6,666
1148	8,130	52	8,041	5	7,910	68	7,868
1206	8,089	53	8,064	6	7,826	68	7,784
1271	8,095	48	8,065	4	7,950	68	7,908
1384	8,092	48	8,062	5	7,891	68	7,849
434	8,180	46	8,109	8	7,678	68	7,637
1229	8,086	48	8,056	9	7,602	68	7,561
1368	8,093	46	8,074	8	7,691	68	7,650
408	8,136	48	8,054	10	7,575	68	7,535
1156	8,130	48	8,091	10	7,521	68	7,481
1621	8,016	48	7,992	6	7,772	68	7,731
445	8,140	55	8,021	6	7,075	68	7,037
1143	8,371	54	8,271	5	8,145	68	8,102
236	6,509	50	6,486	5	6,326	68	6,292
410	8,153	50	8,087	12	7,419	66	7,389
911	8,055	50	8,015	8	7,655	68	7,614
1015	8,183	52	8,131	8	7,776	68	7,735
1049	8,112	50	8,071	7	7,780	68	7,739
1112	8,132	52	8,072	10	7,523	68	7,483
1272	8,098	50	8,057	7	7,767	68	7,726

## Receipts of Kiefer Gasoline, April, 1917.—Continued.

Car No.	THEIR BILLING			OUR RECEIPTS			
	Gross Gal.	Temp.	Net Gal.	Outage	Gross Gal.	Temp.	Net Gal.
1319	8,096	50°	8,055	6"	7,833	68°	7,791
2028	8,153	52	8,116	7	7,792	68	7,750
1228	8,089	46	8,070	8	7,687	68	7,646
1613	8,017	46	8,004	9	7,571	66	7,541
2019	8,147	46	8,143	7	7,786	68	7,744
1952	8,009	52	7,949	6	7,747	70	7,695
1953	8,010	52	7,950	8	7,609	70	7,558
1954	8,007	54	7,937	10	7,450	70	7,400
159	8,052	52	7,956	6	7,799	68	7,757
449	7,060	52	6,985	11	6,454	74	6,394
1033	8,173	53	8,116	4	8,027	68	7,984
1111	8,137	52	8,077	3	8,034	68	7,991
1132	8,140	53	8,074	4	7,981	68	7,938
1277	8,093	52	8,042	5	7,891	68	7,849
1616	8,017	52	7,972	5	7,830	68	7,788
1949	8,005	49	7,961	10	7,449	70	7,399
1950	8,013	50	7,964	8	7,612	70	7,561
1951	8,011	50	7,962	10	7,454	70	7,404
368	7,076	50	7,011	8	6,694	70	6,649
924	8,059	52	8,009	11	7,420	70	7,371
1034	8,201	52	8,149	8	7,793	70	7,741
1065	8,131	49	8,096	11	7,486	74	7,416
1080	8,185	52	8,133	10	7,620	70	7,569
1247	8,092	50	8,052	7	7,762	70	7,710
1602	8,023	48	7,999	10	7,503	70	7,453
1611	8,017	46	8,004	6	7,773	70	7,721
1006	8,128	50	8,087	8	7,724	70	7,673
2029	8,152	50	8,099	10	7,541	74	7,471
328	7,062	50	7,019	12	6,373	74	6,313
335	7,054	50	7,011	11	6,448	74	6,388
2006	8,146	49	8,102	10	7,536	74	7,466
1945	8,014	48	7,975	10	7,461	72	7,401
1947	8,013	48	7,974	8	7,612	72	7,551
1948	8,006	48	7,967	10	7,450	72	7,390
1220	8,096	44	8,087	7	7,765	72	7,703
1502	12,029	46	12,021	11	11,212	72	11,107
985	8,055	46	8,037	10	7,499	74	7,429
1251	8,096	46	8,077	11	7,454	74	7,384
1178	8,130	46	8,102	10	7,521	72	7,361
1209	8,092	46	8,073	10	7,534	76	7,454
1205	8,082	46	8,063	10	7,524	76	7,444
1946	8,011	48	7,972	8	7,610	72	7,549

## Receipts of Kiefer Gasoline, April, 1917.—Continued.

Car No.	THEIR BILLING			Outage	OUR RECEIPTS		
	Gross Gal.	Temp.	Net Gal.		Gross Gal.	Temp.	Net Gal.
1955	8,011	52°	7,956	5"	7,810	72°	7,748
1956	8,009	52	7,949	7	7,679	72	7,618
1957	8,007	50	7,958	6	7,745	72	7,683
1958	8,007	52	7,947	7	7,677	72	7,616
1959	8,005	52	7,945	7	7,675	72	7,614
1960	8,008	53	7,943	7	7,678	72	7,617
1965	8,013	51	7,958	8	7,612	72	7,551
1387	8,095	52	8,044	10	7,536	72	7,476
305	6,364	56	6,300	11	5,795	74	5,741
1006 X	8,153	54	8,039	10	7,567	74	7,496
1066	8,158	56	8,085	11	7,511	74	7,441
1207	8,090	54	8,028	10	7,532	74	7,462
2010	8,150	54	8,078	12	7,355	74	7,286
2012	8,147	56	8,065	12	7,353	74	7,284
437	8,137	50	8,044	11	7,491	74	7,421
1026	8,173	51	8,127	8	7,767	72	7,705
1271	8,095	50	8,054	10	7,536	74	7,466
1384	8,092	50	8,051	11	7,450	74	7,380
1609	8,023	50	7,989	10	7,503	74	7,433
1624	8,014	50	7,980	11	7,418	74	7,349
2016	8,153	48	8,113	10	7,542	74	7,442
1355	8,090	56	8,017	10	7,532	76	7,452
1963	8,005	62	7,892	9	7,529	76	7,449
1964	8,009	60	7,907	11	7,369	76	7,290
1083	8,140	60	8,046	10	7,578	74	7,507
1237	8,099	60	8,005	12	7,370	74	7,301
1961	8,008	60	7,906	8	7,607	72	7,546
1962	8,011	61	7,904	8	7,610	72	7,549
1011	5,170	60	8,075	5	7,967	72	7,908
1462	8,093	60	7,999	7	7,762	74	7,692
1010	8,195	60	8,100	5	7,991	72	7,927
2022	8,152	58	8,059	7	7,791	72	7,729
1023	8,175	62	8,069	8	7,769	76	7,686
1142	8,387	58	8,291	7	8,015	72	7,951
1968	8,011	49	7,967	7	7,681	72	7,620
1967	8,009	54	7,939	8	7,608	72	7,547
1966	8,006	60	7,904	8	7,605	72	7,544
309	6,662	58	6,586	11	6,090	74	6,032
332	7,065	58	6,982	6	6,815	72	6,760
1029	8,225	58	8,141	5	7,990	72	7,926
1148	8,130	60	8,027	11	7,432	74	7,363

X Transferred from GRCX #427.

## Receipts of Kiefer Gasoline, May, 1917.—Continued.

THEIR BILLING				OUR RECEIPTS			
Car No.	Gross Gal.	Temp.	Net Gal.	Outage	Gross Gal.	Temp.	Net Gal.
1957	8,007	61°	7,925	9"	7,489	72°	7,429
2010	8,150	61	8,066	8	7,710	70	7,659
1066	8,158	54	8,095	11	7,511	70	7,461
1207	8,090	54	8,042	10	7,532	70	7,482
1624	8,014	54	8,045	11	7,511	70	7,461
1207	8,090	54	8,042	10	7,532	70	7,482
1624	8,014	54	8,045	11	7,418	70	7,369
1963	8,005	54	8,036	8	7,570	70	7,520
1964	8,009	54	8,040	10	7,405	70	7,356
437	8,137	54	8,023	10	7,576	68	7,534
1251	8,96	55	8,029	10	7,537	70	7,487
1955	8,011	52	7,974	11	7,318	72	7,259
1961	8,008	52	7,972	8	7,573	72	7,512
1962	8,011	49	7,990	10	7,407	72	7,348
1966	8,006	50	7,980	5" Water 10	7,284	72	7,226
2012	8,147	50	8,120	10	7,537	72	7,477
1968	8,011	52	7,974	9 " 10	6,924	74	6,859
1967	8,009	52	7,973	3 " 8	7,472	72	7,412
1245	8,096	52	8,045	10	7,537	74	7,467
1949	8,005	54	7,959	11	7,312	74	7,244
1952	8,009	56	7,952	12	7,222	74	7,155
1953	8,010	54	7,964	12	7,223	74	7,156
1954	8,007	55	7,955	11	7,314	74	7,246
422	7,044	48	6,992	10	6,535	72	6,483
428	8,175	50	8,082	10	7,611	72	7,550
1178	8,130	50	8,080	11	7,432	72	7,373
620	8,018	50	7,978	A-2518- 8	7,553	72	7,493
				B-2603- 8			
				C-2431-10			
1083	8,140	51	8,094	10	7,578	72	7,518
1237	8,099	54	8,037	8	7,696	72	7,634
1368	8,093	48	8,063	8	7,691	72	7,629
956	8,059	46	8,041	8	7,658	68	7,617
1006	8,128	50	8,087	8	7,724	68	7,683
1148	8,130	52	8,070	6	7,842	68	7,801
1209	8,092	42	8,094	6	7,829	68	7,787
1247	8,093	44	8,084	10	7,535	74	7,465
1331	8,092	50	8,051	8	7,690	68	7,649
1366	8,093	51	8,047	8	7,691	68	7,650
2022	8,152	48	8,137	10	7,541	68	7,501
2024	8,148	48	8,133	10	7,538	68	7,498
1950	8,013	56	7,955	11	7,320	74	7,252

## Receipts of Kiefer Gasoline, May, 1917.—Continued.

THEIR BILLING				OUR RECEIPTS			
Car No.	Gross Gal.	Temp.	Net Gal.	Outage	Gross Gal.	Temp.	Net Gal.
1951	8,011	55°	7,958	12"	7,224	74°	7,157
900	8,055	62	7,954	8	7,655	74	7,584
1384	8,092	62	7,990	10	7,534	76	7,454
1945	8,014	60	7,935	11	7,321	74	7,253
1946	8,011	64	7,917	11	7,318	74	7,250
1948	8,006	62	7,920	11	7,313	74	7,245
1965	8,013	64	7,379	12	7,226	74	7,159
1227	8,088	56	8,057	9	7,610	74	7,539
1973	8,009	52	7,973	9	7,491	74	7,421
1976	8,006	52	7,970	9	7,488	74	7,418
445 x	8,173	50	8,132	2'	7,225	74	7,156
335	7,054	52	6,979	1	6,194	76	6,128
434	8,180	54	8,066	10	7,616	76	7,535
1387	8,095	54	8,033	8	7,693	76	7,612
1609	8,023	52	7,978	11	7,426	76	7,347
1947	8,013	54	7,966	10	7,409	76	7,330
1956	8,009	52	7,973	11	7,316	76	7,238
1958	8,007	54	7,961	9	7,489	76	7,410
1385	8,092	54	8,030	11	7,450	76	7,371
1975	8,008	58	7,941	8	7,576	74	7,506
2014	8,148	58	8,079	11	7,448	74	7,379
1174	8,130	58	8,038	1	7,120	74	7,054
1038	8,151	54	8,088	10	7,589	76	7,509
332	7,065	52	7,012	12	6,376	76	6,308
408	8,136	52	8,060	10	7,575	76	7,494
960	8,061	52	8,010	10	7,505	76	7,425
1229	8,086	54	8,024	10	7,528	74	7,458
1602	8,023	52	7,978	12	7,346	76	7,268
368	7,076	62	7,019	1	6,213	78	7,176
1068	8,137	62	8,093	1	7,315	78	7,227
1080	8,185	62	8,141	1	7,168	78	7,082
1278	8,092	62	8,048	1	7,087	78	7,002
1225	8,095	58	8,012	11	7,453	74	7,384
1859	8,172	58	8,103	1	7,176	78	7,090
1971	8,006	57	7,944	10	7,406	74	7,337
1977	8,009	58	7,942	10	7,409	74	7,340
1955	8,011	62	7,921	6	7,727	74	7,655
1957	8,007	58	7,940	6	7,723	74	7,651
1961	8,008	56	7,951	6	7,725	74	7,653
1963	8,005	58	7,938	5	7,789	74	7,717
1966	8,006	56	7,948	7	7,651	74	7,580

x—GRCX 445 transferred from GRCX 1033.

## Receipts of Kiefer Gasoline, May, 1917.—Continued.

THEIR BILLING				OUR RECEIPTS			
Car No.	Gross Gal.	Temp.	Net Gal.	Outage	Gross Gal.	Temp.	Net Gal.
1969	8,009	56°	8,023	6"	7,725	74°	7,653
392	7,055	61	6,981	3 0	3,872	74	3,836
924	8,059	61	8,002	10	7,503	74	7,423
1962	8,011	61	7,971	11	7,323	74	7,255
1967	8,009	62	7,962	11	7,321	74	7,253
621	8,005	73	7,943	A- 4	7,843	78	7,749
				B- 5			
				C- 4			
1946	8,011	56	7,997	5	7,795	78	7,701
1948	8,006	54	8,003	8	7,574	78	7,483
1953	8,010	58	7,986	6	7,726	78	7,633
1954	8,007	56	7,993	6	7,724	78	7,631
1321	8,089	50	8,023	1 2	7,180	78	7,094
1616	8,017	48	8,033	8	7,642	78	7,550
1945	8,014	48	8,023	5	7,798	78	7,704
1965	8,013	48	8,022	6	7,729	78	7,636
1968	8,011	48	8,020	8	7,578	78	7,487
2024	8,148	48	8,157	10	7,538	78	7,448
1978	8,014	55	8,041	6	7,730	78	7,637
1979	8,015	54	8,048	6	7,731	78	7,638
1982	8,011	54	8,044	7	7,656	78	7,564
2006	8,146	56	8,112	10	7,536	78	7,446
1369	8,092	60	8,059	10	7,534	78	7,444
1981	8,008	58	8,019	8	7,576	78	7,485
1113	8,139	64	8,061	11	7,440	78	7,351
1270	8,088	60	8,055	12	7,360	78	7,272
1327	8,096	58	8,074	11	7,454	78	7,365
2029	8,152	62	8,105	11	7,452	78	7,363
1132 x	8,140	62	8,052				
1355 x	8,090	60	8,048				
1960 x	8,008	60	7,972				
PR car 808 x				2' 4"	5,677	78	5,609
PR car 843 x				3 10	3,457	78	3,416

1,112,507

1,016,789

Their billing. . . . 1,112,507

Our receipts. . . . 1,016,789

Difference. . . . . 95,718

x—Pr cars 808 and transferred from GRCX #1132, 1355 and 1960

## Receipts of Kiefer Gasoline, May, 1917.—Continued.

	Billed	Received	Difference
Kiefer	761900	707225	54675
Drumright	326542	286363	40179
Jenks	16122	15452	670
Cleveland	7943	7749	194
	<hr/> 1112507	<hr/> 1016789	<hr/> 95718

**Government's Exhibit 85.**

Cable Address "Gulfoil" W. U. and A. B. C. Code 4th & 5th Editions.

**GULF REFINING COMPANY**

Frick Building Annex  
Pittsburgh, Pa.

Chas. B. Ellis,  
Traffic Manager.

Petroleum and  
Its Products.

January 15, 1914. File 17-A-Frisco.  
Special Delivery.

Mr. M. R. Powers,

A. G. F. A., St. L. & S. F. RR., St. Louis, Mo.

Dear Sir: Referring to telephone conversation

We want to move 10 cars of gasoline from Kiefer to Port Arthur, to be handled in our own boats to our Eastern distributing stations.

I find nothing but a 37 cent rate published from Kiefer to Port Arthur. Will you kindly arrange to publish a 33 cent rate from Kiefer to Port Arthur, this rate being the same as the northbound rate from Port Arthur to Tulsa, as shown in Leland's tariff #35-I.

If this movement proves satisfactory, I am sure that there will be more of it to move. This business would route via Frisco in connection with K. C. S., or Frisco in connection with the H. & T. C.

I believe that I can induce the Kansas City Southern to participate with you in the 33 cent rate, but, as you originate the business, no doubt you can handle this feature with them.

I must have some information not later than noon tomorrow. Please be sure to call me by long distance telephone at our expense.

Yours truly,

(Signed) C. B. Ellis.



If we make shipment it will have to move immediately and could be handled in shape of reparation claim same as from Ft. Worth to Kiefer. C. B. E.

---

**Government's Exhibit 86.**

(Carbon copy)

May 29, 1916.

SWL-A/L-8425-C

Gasoline—rates on—from points in Oklahoma to Beaumont-Port Arthur District.

Mr. C. B. Ellis, T. M.,

Gulf Refining Co., Pittsburgh, Pa.

Dear Sir: Some one has suggested cancellation of item 2546-B, Supplement 40, SWL Tariff 26-T, offering as an excuse that continuation of this figure may jeopardize rates of 27 and 39 cents respectively to Texas Common point territory.

We shall be governed by your requirements in the premises, as to the cancellation of Item 2546-B and shall thank you to fully advise by return mail.

Yours truly,

wmp-bm

A.G.F.A.

5-27

Blind co—Mr. R. B. Merick, Ga., Pittsburgh, Pa.

---

**Government's Exhibit 87.**

GULF REFINING COMPANY

G. R. Nutty, Vice President.

Frick Building Annex.

Cable Address "Gulfoil" W. U. and A. B. C. Code 4th & 5th Editions Sales Department.

Chas. B. Ellis, Traffic Manager. Petroleum and its Products.

Pittsburgh, Pa., June 5th, 1916. File 17-A.

Mr. W. M. Powers,

A. G. F. A., St. L. S. F. R. R. Co., St. Louis, Mo.

Dear Sir: Your letter May 29th, SWL A/L-8425-C, in which you advise that someone suggested cancellation of Item 2546-B, Supplement 40, SWL Tariff 26-T.

We do not want this rate cancelled as it is in daily use. We are now moving about eighteen cars per week on this rate.

Yours truly,

(Signed) C. B. Ellis.

(Stamped) Frisco Freight Traffic Department St. Louis, Mo. Jun 6 1916.

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**Government's Exhibit 88.****GULF REFINING COMPANY****Frick Building Annex**

Chas. B. Ellis, Traffic Manager      Petroleum and Its Products  
Pittsburgh, Pa. February 9, 1915 File 17-A A-7707

Mr. J. R. Christian,  
G. F. A., Sunset Central Lines, Houston, Texas.

Mr. F. G. Reilly,  
A. F. T. M., Frisco Lines, St. Louis, Mo.

Gentlemen: This will acknowledge receipt of your favor January 19th, file A-7159-C, with reference to conversation in St. Louis relative to rates from Port Arthur to Kiefer and Kiefer to Port Arthur, as well as from North Fort Worth to Kiefer and Kiefer to North Fort Worth.

I have gone into this matter from all angles and am going to ask that you arrange for the publication of 30 cents from Port Arthur to Kiefer and 30 cents Kiefer to Port Arthur, and 25 cents from North Fort Worth to Kiefer and from Kiefer to North Fort Worth, applying on naphtha and gasoline.

The present rates between above mentioned points are unreasonable to the extent that they exceed above requested rates, and also exceed published rates from other producing points where the mileage haul and conditions are similar.

Please advise at your earliest possible convenience as to what action in the premises will be taken.

Yours truly,

(Signed) C. B. Ellis.

CC-Mr. R. B. Merriek. GA, Frisco, Pittsburgh.

(Stamped) Frisco Freight Traffic Department St. Louis,  
Mo. Feb 10 1915

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**Government's Exhibit 89.**

(Carbon copy)      March 18, 1915 A-7707-C

Rate Adjustment: Naptha—Port Arthur, Tex. to Kiefer, Okla.

Mr. C. B. Ellis, T. M.,  
Gulf Refining Co., Pittsburgh, Pa.

Dear Sir: Referring to your joint letter of Feb. 9th File 17-A, regarding publication of rate of 30 cents on naphtha Port Arthur, Tex. to Kiefer, Okla. Also the same rate in the reverse direction on gasoline and in addition a rate of 25 cents from North Ft. Worth to Kiefer.

Your application has been given careful consideration and this is to advise that in view of present conditions, that of our traffic not yielding sufficient revenue to pay cost of operation and the further fact that we are now endeavoring to increase rather than reduce rates, it will be impracticable to establish the rates at this time which you propose.

Yours truly,

wmp-bm

A.F.T.M.

cc-Mr. J. R. Christian, GFA, Sunset Central Lines, Houston, Tex. Mr. R. B. Merriek, GA, Pittsburgh, Pa.

---

**Government's Exhibit 90.**

NIGHT LETTER—The Western Union Telegraph Company

Received at W. U. Bldg., S. W. Cor 7th and Main Sts.,  
Kansas City 305 A RI 28 NL 2268

R R Mitchell

Pittsburgh Pa Jan 18th 14

G F A K C SOU R R Kansas City Mo.

Requested Powers docket rate thirty three cents Kiefer to Port Arthur on gasoline for coastwise shipments He has wired you and Christian for concurrence hope you will concur answer

C B Ellis 647PM

(Stamped) Port Arthur Route General Freight Office  
Reed Jan 19 1914 Received Jan 19 1914 R. R. Mitchell

---

**Government's Exhibit 91.**

DAY LETTER—The Western Union Telegraph Company.

Received at Pittsburgh Pa Jany 19 1914 80 KS JY 89 Blue  
R R Mitchell KC S RY Kansas City Mo.

Exchange telegrams relative thirty three cent rate Kiefer to Port Arthur in addition to this southbound rate we are figuring on moving about fifty cars per month or more of naphtha Port Arthur to Kiefer have talked with Powers St. Louis long distance and he will make additional request on Leland today as separate proposition that same be docketed for San Antonio meeting this will permit of majority cars moving under load both ways want you to favor this and use your influence with other lines am trying to get you long distance

C B Ellis 105PM

(Stamped) Port Arthur Route General Freight Office  
Reed Jan 19 1914 Received Jan 19 1914 R. R. Mitchell

---

**Government's Exhibit 92.****GULF REFINING COMPANY**

Frick Building Annex

Chas. B. Ellis, Traffic Manager      Petroleum and Its Products  
Pittsburgh, Pa., January 19th, 1914.  
File 17-a-Frisco

Special Delivery.

Mr. W. M. Powers,

AGFA, St. L. &amp; S. F. RR., St. Louis, Mo.

Dear Sir: Referring to my long distance telephone conversation this morning, relative to docketing subject for the San Antonio meeting tomorrow—rate 33 cents per hundred pounds, Naphtha, from Port Arthur and West Port Arthur to Kiefer, Okla.

We are figuring on from 50 to 75 cars of naphtha per month from Port Arthur to Kiefer. I find that the present rate of 43 cents per hundred pounds is prohibitive.

I would thank you to arrange for this 33 cent rate in connection with the Kansas City Southern and Sunset Lines at the earliest possible date.

In Mr. Leland's #35-I, at the present time, there is a 33 cent rate on refined petroleum and its products—Port Arthur and West Port Arthur to Tulsa and we should have a rate not to exceed this rate to Kiefer.

This naphtha is being moved from Port Arthur to Kiefer to be further refined at that point in connection with products now at Kiefer and the outbound shipments will consist of gasoline and, for each car of naphtha moved into Kiefer, there is approximately two cars of gasoline outbound.

I hope that you will have this matter presented at the meeting at San Antonio and, if necessary, give definite notice, having rate published at the very earliest possible date as we will want to begin shipment before the middle of next month. This is absolutely new business.

Would thank you to favor me with advice at the earliest possible date if rate will be arranged for, stating on what date same will become effective.

Yours truly,

(Signed) C B. Ellis

CC-Messrs. Christian and Mitchell.

(Stamped:) Received Jan 21 1914 R. R. Mitchell Port  
Arthur Route General Freight Office Reed Jan 21 1914

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1970 GULF REFINING COMPANY, A CORPORATION, vs.

F. A. Timmons' Record of Unloading Cars—Continued.

Count No.	Car No.	Date Unloaded.	Tank No.	Freight Bill No.
10	1327	1-16-17	805	814
11	428	1-19-17	805	993
	1278	1-19-17	805	994
	1347	1-19-17	805	995
	2025	1-19-17	805	996
12	629	1-29-17	805	1920
	1356	1-29-17	805	1920½
	1358	1-29-17	805	1919
13	328	1-25-17	805	1667
	445	2-4-17	805	182
	1153	1-25-17	805	1668
	1359	1-25-17	805	1669
	2008	1-25-17	805	1670
14	1155	1-29-17	805	1951
	1225	1-29-17	805	1952
	1243	1-29-17	805	1953
	1397	1-31-17	805	2037
	2027	1-29-17	805	1954
15	2013	2-6-17	805	344
16	1462	4-4-17	805	98
17	1061	3-7-17	805	705
	1155	3-7-17	805	704
	1607	3-7-17	805	703
18	950	3-13-17	805	1034
	1507	3-13-17	805	1035
19	1038	3-17-17	805	1295
	1206	3-17-17	805	1294
20	332	3-23-17	805	1666
	1029	3-20-17	805	1521
	1064	3-23-17	805	1665
22	422	5-13-17	857	960
	428	5-13-17	857	958
	1178	5-13-17	857	961
	620	5-13-17	857	955
	1083	5-13-17	857	956
	1237	5-13-17	857	957
	1368	5-13-17	857	959
23	428	6-7-17	805	507
	1083	6-7-17	805	506
24	1201	6-18-17	805	1191

## F. A. Timmons' Record of Unloading Cars—Continued.

Count No.	Car No.	Date Unloaded.	Tank No.	Freight Bill No.
24	1206	6-21-17	805	1333
	1225	6-18-17	805	1189
	1624	6-18-17	805	1190
	1727	6-18-17	805	1185
	1852	6-18-17	805	1183
	1854	6-18-17	805	1182
	1856	6-18-17	805	1184
	1858	6-18-17	805	1181
	1950	6-18-17	805	1186
	1951	6-18-17	805	1187
25	1852	7-21-17	805	1582
	1855	7-21-17	805	1581
	1947	7-25-17	805	1770
26	1946	7-21-17	805	1580
27	1033	8-11-17	805	930
	1206	8-11-17	805	929
	1271	8-14-17	805	1042
	1706	8-11-17	805	933
	1708	8-11-17	805	928
28	924	8-17-17	805	1360
	1721	8-17-17	805	1357
	1728	8-17-17	805	1356
	1774	8-17-17	805	1359
	1798	8-17-17	805	1358
29	1366	8-20-17	805	1624
	1865	8-20-17	805	1628
30	1245	8-31-17	805	2326
31	1710	9-19-17	805	1319
	1786	9-19-17	805	1320
	1978	9-19-17	805	1318
32	1127	10-30-17	805	2232
33	1366	11-1-17	805	219
	1774	11-3-17	805	218
	1978	11-1-17	805	215
34	610	11-9-17	805	379
	1424	11-11-17	805	377
	2027	11-9-17	805	378
35	625	12-5-17	805	2491
	630	12-5-17	805	2489
36	2103	2-3-18	805	191
	2108	2-3-18	805	186

## F. A. Timmons' Record of Unloading Cars—Continued.

Count No.	Car No.	Date Unloaded.	Tank No.	Freight Bill No.
36	2115	2-3-18	805	185
	2119	2-3-18	805	187
	2160	2-3-18	805	183
	2172	2-3-18	805	190
	2177	2-3-18	805	189
	2182	2-3-18	805	188
	2189	2-3-18	805	184
	2198	2-3-18	805	192
37	1400	2-27-18	857	1728
38	1708	3-22-18	805	1691
	2106	3-23-18	857-805	1698
	2107	3-22-18	805	1762
	2116	3-24-18	857	1694
	2120	3-24-18	857	1695
	2149	3-23-18	857-805	1696
	2154	3-23-18	857-805	1697
	2159	3-23-18	857-805	1700
	2197	3-23-18	857-805	1699
39	401	4-11-18	857	552
	406	4-11-18	857	551
	436	4-11-18	857	550
	503	4-11-18	857	554
	554	4-11-18	857	553
40	1250	5-8-18	857	88
	1430	5-8-18	857	87
	1816	5-8-18	857	93
	1854	5-8-18	857	90
	2123	5-8-18	857	89
	2166	5-9-18	857	93½
	2197	5-8-18	857	92
41	422	2-28-17	805	2080
42	1718	2-28-17	805	2082
43	434	3-30-17	805	2483
	1369	3-30-17	805	2482
45	1178	4-27-17	805	1436
46	1209	4-28-17	805	1435
47	434	5-7-17	805	586
48	1229	5-7-17	805	587
49	1850	6-18-17	805	1172
	1853	6-18-17	805	1171



## F. A. Timmons' Record of Unloading Cars—Continued.

Count No.	Car No.	Date Unloaded.	Tank No.	Freight Bill No.
50	1232	6-27-17	805	1757
	1974	6-27-17	805	1758
51	1268	7-14-17	805	755
	1270	7-11-17	805	754
52	449	7-14-17	805	1011
	1037	7-14-17	805	1012
53	1220	7-15-17	805	1180
	1743	7-15-17	805	1181
54	1957	7-20-17	805	1451
	1983	7-20-17	805	1452
55	1956	7-27-17	805	2009
	1959	7-27-17	805	2008
56	1245	8-11-17	805	927
57	2022	8-17-17	805	1156
58	1729	8-20-17	805	1629
59	600	10-1-17	805	2122
	1071	10-1-17	805	2123
60	1624	10-7-17	857	585
	1983	10-7-17	857	584
61	1254	10-14-17	805	1082
	1864	10-14-17	805	1083
62	926	10-30-17	805	2132
63	1981	11-3-17	805	186
64	1265	11-2-17	805	187
	2022	11-2-17	805	185
65	2124	1-13-18	857	715
66	2106	1-20-18	857	2027
	2183	1-20-18	857	2026
67	2150	6-13-18	857	651
	2151	6-13-18	857	652
68	1335	5-9-18	857	568
	1712	5-9-18	857	567
69	924	5-19-18	857	1305
	2178	5-19-18	857	1304
70	2119	6-5-18	805	162
	2171	6-6-18	805	163
71	764	6-28-18	805	1481

1374 GULF REFINING COMPANY, A CORPORATION, vs.

F. A. Timmons' Record of Unloading Cars—Continued.

Count No.	Car No.	Date Unloaded.	Tank No.	Freight Bill No.
72	1211	9-21-18	838	1173
	1446	9-21-18	838	1174
73	1381	10-11-18	805	872
	1967	10-11-18	805	871
74	2110	11-12-18	838	634
	2249	11-12-18	838	633
75	1946	12-31-18	838	1715
	2245	12-31-18	838	1716
76	1930	1-16-19	805	662
	2110	1-15-19	805	661
77	2200	1-29-19	838	1398
	2230	1-29-19	838	1397
78	2207	2-12-19	838	317
	2240	2-12-19	838	316
79	401	2-21-19	857	969
	2155	2	857	970
80	2185	3-17-19	857	1074
	2223	3-17-19	857	1073
81	2120	1-13-18	857	714
82	1072	2-8-18	805	482
	1957	2-8-18	805	228
83	1277	4-26-18	857	1607
	1431	4-26-18	857	1608
84	1607	4-27-18	857	1760
	1979	4-27-18	857	1761
85	2101	5-22-18	857	1543
	2120	5-22-18	857	1542
86	1228	6-25-18	805	1287
	1708	6-25-18	805	1288
	1726	6-25-18	805	1289
	1744	6-25-18	805	1290
	2199	6-25-18	805	1291
87	1116	7-26-18	857	1577
88	1383	9-12-18	838	550
	1728	9-12-18	838	551
	2119	9-12-18	838	552
	2160	9-14-18	838	626
89	1225	9-14-18	838	703
	1455	9-14-18	838	699

## F. A. Timmons' Record of Unloading Cars—Continued.

Count No.	Car No.	Date Unloaded.	Tank No.	Freight Bill No.
89	1470	9-14-18	838	700
	1611	9-14-18	838	698
	2113	9-14-18	838	697
	2170	9-14-18	838	702
	2197	9-14-18	838	701
90	251	9-30-18	838	1764
91	745	10-15-18	838	950
	2112	10-15-18	838	949
92	1707	11-12-18	857	308
93	2173	12-12-18	857	596
	2183	12-12-18	857	597
94	2157	12-16-18	857	763
	1976	12-16-18	857	764
95	2194	12-20-18	857	1079
96	1762	12-30-18	838	1644
	2207	12-20-18	838	1645
97	1956	12-28-18	857	1589
98	2185	1-31-19	838	1477
	2171	1-31-19	838	1473
	1549	1-31-19	838	1478
99	1956	1-17-19	857	682
	2172	1-17-19	857	681
	2178	1-17-19	857	685
	2196	1-17-19	857	684
	2248	1-17-19	857	683
100	2209	1-14-19	805	414

## Government's Exhibit 95.

Partial statement of shipments of BLENDED GASOLINE made from Kiefer, Okla., by Gypsy Oil Company for account Gulf Refining Company consigned directly to customers of Gulf Refining Company.

Invoice Order						
Date.	No.	No.	Sold to.	Destination.	Price.	Note.
12-19-13	K 1717	2681	Manhattan Oil Company	Des Moines, Iowa	\$.1265	(2)
12-27-13	K 1744	2705	Chas. C. Stroll Oil Co.	Louisville, Ky.	.12	(2)
12-29-13	K 1746	2702	Manhattan Oil & Linseed Company	Minnesota Transfer, Minn.	.135	(2)
1- 2-14	K 1	2631	Manhattan Oil Company	Des Moines, Iowa	.1265	(2)

# 1376 GULF REFINING COMPANY, A CORPORATION, vs.

## Shipments of BLENDED GASOLINE—Continued.

Invoice Order					
Date.	No.	No.	Sold to.	Destination.	Price. Note.
1- 1-14	K 2	2753	Winnipeg Oil Company	Winnipeg, Canada	.1075 (1)
1- 5-14	K 16	2729	Northwest Grain Dealers Assn.	Paddington, Canada.	.1075 (1)
1- 7-14	K 17	2753	Winnipeg Oil Company	Winnipeg, Canada	.1075 (1)
1-12-14	K 55	2753	Winnipeg Oil Company	Winnipeg, Canada	.1075 (1)
1-19-14	K 74	2843	St. Louis Oil Co.	St. Louis, Mo.	.0975 (1)
2- 2-14	K 174	2951	Kentucky Consumers Oil Company	Louisville, Ky.	.11 (2)
2-26-14	K 300	3021	St. Louis Oil Co.	Cape Girardeau, Mo.	.095 (1)
3- 3-14	K 326	3103	Climax Western Oil Co.	Minneapolis, Minn.	.1225 (2)
3- 9-14	K 359	3022	Tiona Refining Co.	Indianapolis, Ind.	.11 (2)
3-10-14	K 366	3152	Manhattan Oil Co.	Mitchell, S. D.	.0975 (1)
3-18-14	K 417	3213	Climax Western Oil Co.	Minneapolis, Minn.	.1225 (2)
10- 6-14	K 1251	4348	Union Petroleum Co.	Minneapolis, Minn.	.08 (1)
10-20-14	K 1291	4408	Van Tilburg Oil Co.	Minneapolis, Minn.	.1050 (2)
11- 2-14	K 1350	4450	Manhattan Oil & Linseed Co.	Mitchell, S. D.	.08 (1)
12- 1-14	K 1452	4580	S. L. Collins Oil Co.	Centerville, Iowa	.08 (1)
12-10-14	K 1479	4536	Manhattan Oil & Linseed Co.	Minnesota Transfer	.1050 (2)
12-15-14	K 1492	4612	Pure Oil Company	Minneapolis, Minn.	.1025 (2)
12-15-14	K 1494	4537	Manhattan Oil & Linseed Co.	Mitchell, S. D.	.08 (1)

Note 1—F.O.B. Kiefer, Okla.

Note 2—F.O.B. Destination.

Certified correct

(Signed) L. C. Lyon, Local Auditor.

Pittsburgh Pa—May 20-1919.

## Government's Exhibit 97.

### GULF REFINING COMPANY

G. R. Nutty, Vice President

Frick Building Annex

Cable Address "Gulfoil"

Sales Department

Chas. B. Ellis, Traffic Manager.

Petroleum and  
its products

Pittsburgh, Pa., May 16th, 1916.

File 17-A

Mr. F. C. Reilly,

A. F. T. M., St. L. S. F. R. R., St. Louis, Mo.

Dear Sir: Confirming my telegram t-day requesting that you arrange for publication of seventeen cent rate applying

both north and southbound between Port Arthur, West Port Arthur and Kiefer, on same relative basis as this product is published in Item 3022 $\frac{1}{2}$ , Supplement 41, Leland's 26-T, Item 3559 in Supplement No 3 to 59-G, and in Item 3696 Leland's 44-I.

All of our products from Port Arthur and North Fort Worth is an unfinished product, and is passed through the refinery at Kiefer, and the products secured from this partial refining at Kiefer is an unfinished product and is transported to our Port Arthur refinery, and at that point further refined, and we are entitled to the unrefined rate as outlined above.

I will be glad to have you advise if you will arrange for the publication of these rates by your line between North Fort Worth and Kiefer, and Kiefer and North Fort Worth, in connection with the Southern Pacific and K. C. S. to Port Arthur. Am sending copy of this letter to Mr. Mitchell and Mr. Christian at St. Louis, asking that they participate in this rate.

It was my intention to be in St. Louis to-day, but owing to having to go East tonight, it is impossible for me to be there.

Yours truly,

(Signed) C. B. Ellis.

CC—Mr. R. R. Mitchell, G. F. A., K. C. S. Ry., St. Louis, Mo.

CC—Mr. J. R. Christian, G. F. A., St. Louis, Mo.

CC—Mr. D. A. Roberts, G. A., K. C. S. Ry., Pgh, Pa.

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**Government's Exhibit 98.**

**WESTERN UNION TELEGRAM**

Received at Bu Pittsburgh Pa 337PM May 16 1916.

F C Reilly 2072

St Louis Mo

Will you please arrange through Southwestern Committee for publication seventeen cent rate crude unfinished naphtha Port Arthur West Port Arthur to Kiefer and Kiefer to Port Arthur West Port Arthur and twenty cents from North Fort Worth to Kiefer and Kiefer to North Fort Worth on same relative basis now published in item thirty twenty two half supplement forty one Lelands twenty six tee

C B Ellis 355P

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**Government's Exhibit 99.**

Copy

No. 3994

National Refining Company

v.

Missouri, Kansas & Texas Railway Company et al.

Submitted October 19, 1911, Decided May 7, 1912.

Complainant shipped from Muskogee, Okla., to Coffeyville, Kan., a number of carloads of the so-called lighter ends of petroleum oil, which had been separated from the crude oil by a process of skimming, but was useless for commercial purposes until a further process of refinement had been undergone. Defendants assessed the rates applicable to refined oil; Held, that a reasonable rate on the commodity shipped would not have exceeded by more than 2 cents per 100 pounds the rates contemporaneously applicable to crude oil, which relationship should be established for the future. Reparation awarded.

E. J. Blandin and C. D. Chamberlain for complainant.

Joseph M. Bryson, C. S. Burg, and J. W. Allen for Missouri, Kansas & Texas Railway Company.

Herbert J. Campbell for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

**REPORT OF THE COMMISSION.**

By the Commission:

The complainant is a corporation engaged in the oil business and has a refinery at Coffeyville, Kans. In its petition, filed April 5, 1911, it alleges that unreasonable rates were charged by defendants for the transportation from Muskogee, Okla., to Coffeyville of a certain distillate of petroleum oil consisting of the lighter ends of the crude oil. Reparation and the establishment of a reasonable rate are sought.

The oil in question was purchased F. O. B. cars at Muskogee from two concerns, the Merchants Oil Company and the Muskogee Refining Company, and was shipped by these concerns for complainant's account and under its instructions. Of the 77 carloads covered by freight bills filed in the record, 51 moved over the Missouri, Kansas & Texas Railway between October 8, 1909, and March 25, 1910. The weight of these shipments aggregated 2,900,159 pounds, and charges

were paid by complainant in the sum of \$3,480.02, based on a rate on 12 cents per 100 pounds.

The remaining 26 carloads moved over the Missouri, Oklahoma & Gulf Railway and the St. Louis, Iron Mountain & Southern Railway, hereinafter referred to as the Iron Mountain route, the charges being assessed at various rates. During November and December, 1909, 10 carloads, of an aggregate weight of 573,091 pounds, were shipped, and charges were collected thereon in the sum of \$859.62, at a rate of 15 cents per 100 pounds. From March 24 to April 30, 1910, 9 carloads, of an aggregate weight of 529,089 pounds, were shipped, and charges were paid in the sum of \$634.90, at a rate of 12 cents per 100 pounds. During May, 1910, 7 carloads, of an aggregate weight of 363,707 pounds, were shipped, and charges were paid thereon in the sum of \$1,309.35, at a rate of 36 cents.

The distance from Muskogee to Coffeyville over the Iron Mountain route is 98 miles. The rate of 12 cents per 100 pounds charged by the Missouri, Kansas & Texas Railway Company was the rate applicable to the transportation of crude oil during all of the period when these shipments were made. Over the Iron Mountain route a rate of 15 cents for the transportation of crude oil was in force during November and the greater part of December, 1909. Effective December 25, 1909, this rate was reduced to 12 cents, and so remained until June 30, 1910, when it was further reduced to 10 cents per 100 pounds. The rate of 36 cents charged on the 7 shipments in May, 1910, was the fifth-class rate applicable to the transportation of refined oil. On September 12, 1910, the Missouri, Kansas & Texas reduced its rate on refined oil, Muskogee to Coffeyville, from 36 to 17 cents; but the rate on refined oil, over the Iron Mountain route is still 36 cents; although to Kansas City and certain other points to which the traffic moves through Coffeyville this route maintains 17-cent rate on refined oil. At the time that the crude-oil rate was reduced to 10 cents the Iron Mountain route established a rate of 12 cents on fuel oil, which had formerly taken the same rate as crude oil. The rate on crude oil was reduced from 15 to 12 cents via the Missouri, Kansas & Texas on February 13, 1909, and via the Iron Mountain route on December 25, 1909.

Under the Western Classification petroleum oil and its products are rated fifth class. But it has been the practice of carriers in this territory to fix commodity rates lower than the class rates between points where there is any considerable movement of petroleum oil, and these commodity rates have



come to be the normal rates in comparison with which other rates for the transportation of petroleum oil and its products in this territory are to be measured.

The rates on crude oil, as named above, over both routes were commodity rates, but no commodity rate on refined oil between Muskogee and Coffeyville was published until September 12, 1910, which was subsequent to the movement of all the shipments under consideration; and, therefore, if they are to be classed as refined oil, the lawful rate on all of these shipments, under the tariffs in force, was 36 cents. It is the contention of the carriers that they should have been so charged. Complainant asserts that they should have moved under the rates applicable to the transportation of crude oil, and that in view of the reduction in the rate on crude oil to 10 cents per 100 pounds, though that reduction was made subsequently to these shipments, the charges should be based on a rate not exceeding 10 cents per 100 pounds.

Upon the arrival of the shipments at Coffeyville they were examined by an inspector of the Western Railway Weighing & Inspection Bureau, who classified the commodity as a refined, oil, and thereupon bills for the difference between the amount paid and the amount that would have been paid, based on the rate applicable to refined oil, were presented to complainant. These undercharge bills, amounting to about \$8,000, have not been paid, complainant refusing payment until the proper rate has been determined by the Commission.

The product that was shipped seems to have no distinct commercial designation or trade name; by complainant it is referred to as "crude product," one of the shippers described it in the bills of lading as "crude benzine"; the carriers classed it as refined oil. The evidence shows that the crude oil had undergone a skimming process, and that this commodity was one of the two resulting products. The Muskogee crude, as it comes from the well, has too low a fire test to be salable as fuel oil; by the skimming process the lighter ends of the oil are extracted, and the heavier residue becomes marketable as fuel oil.

This skimming process is accomplished by distillation carried just far enough to separate the lighter from the heavier oil, the former amounting to about one-fourth part of the oil. The extracted product, though not separated in accordance with any specifications, may, therefore, properly be roughly described as a light end distillate, and that designation will be used in this report. It was this product that was shipped, and complainant's testimony was to the effect that it had no commercial value except for refining purposes; that

at complainant's refinery it was kept separate from the crude oils and refined into gasoline, naphtha, turpentine substitute, and a residuum sold as fuel oil.

For refining purposes this light-end distillate commanded a higher price than the crude oil from which it was extracted. Complainant's president testified that the price of the Muskogee crude oil at the time of purchase was 2 cents per gallon; he was not certain, but thought he paid 3 cents for the light-end distillate. The information of defendants was to the effect that the price was  $3\frac{1}{4}$  cents. Complainant's president testified that, at the time of this purchase, he was in special need of material for lighter-end products, and for this reason was willing to pay a price higher than is customary for this distillate. Under ordinary circumstances it would be more profitable to use a straight crude oil.

Complainant's testimony was to the effect that this light-end distillate met a specific demand that was not met by the crude oil, and that, in view of this demand, a higher price was paid for it than would be paid for the crude oil. Whether or not that demand was a special one, existing only at that particular time so far as complainant is concerned, does not affect the essential facts.

As we have seen, the rate of 36 cents on refined oil at the times these shipments moved was the fifth class rate, and was applicable only because no commodity rate had been established between Muskogee and Coffeyville. Its unreasonableness is clearly indicated by the fact that, a few months later, one of the routes established a commodity rate of 17 cents, less than one-half of the class rate, and the other route maintains a 17-cent rate to points much more distant than Coffeyville. Moreover, this light-end distillate, while it had been increased in value by a process of manufacture, was not what is commercially understood as a refined product of petroleum oil. It was of value only as a material for further process of refinement, and its price of  $3\frac{1}{2}$  cents was materially below the prices of the articles into which it was ultimately separated. If 17 cents per 100 pounds is a reasonable rate for the transportation of gasoline, naphtha, and other products of petroleum oil, it is too high for the movement of this light-end distillate.

In determining rate to be applied to the transportation of this commodity we are assisted by the action of one of the routes in regard to fuel oil, on which it has established a rate of 2 cents in excess of the rate on crude oil. Fuel oil is produced from the Muskogee crude oil by the identical process that extracts this light-end distillate. Each has under-

gone the same degree of manufacture, and, while there is some difference between the prices of the fuel oil and the light-end distillate, the gap between them is not so great as that which separates them from the commercially refined products. The record leads us to conclude that a rate not more than 2 cents per 100 pounds in excess of the rate on crude oil would be a reasonable rate from Muskogee to Coffeyville on this distillate.

Complaint is made that the crude-oil rates of 12 and 15 cents applied to some of these shipments was unjust and unreasonable. The evidence presented in support of this contention is a reference to the subsequent reduction of the rate to 10 cents and a number of exhibits showing the rates on crude oil between various points. Upon the record we are not convinced that these rates of 12 and 15 cents were unreasonable at the times they were in force. The commission has repeatedly held that the voluntary reduction of a rate is not satisfactory proof of the unreasonableness of the prior rate.

Upon consideration of all the facts appearing of record, the Commission is of opinion and finds that a rate for the transportation from Muskogee to Coffeyville of the light-end distillate produced by the so-called skimming process that exceeded the rate contemporaneously charged for the transportation of crude oil by more than 2 cents was unjust and unreasonable, and that the carriers defendant herein should establish and maintain for a period of not less than two years this relationship between the rates on crude oil and this light-end distillate.

We further find that complainant made the shipments as described in the foregoing statement of facts; that the charges paid by complainant, in the sum of \$1,309.35, at a rate of 36 cents, on 7 carloads of this light-end distillate which moved during May, 1910, over the lines of the Missouri, Oklahoma & Gulf Railway and St. Louis, Iron Mountain & Southern Railway, as hereinbefore set forth, were unjust and unreasonable so far as they exceeded \$509.19, the charges which would have accrued at the reasonable rate of 14 cents per 100 pounds; that complainant has been damaged in the difference between said amounts; and that it is, therefore, entitled to reparation from said defendants in the sum of \$800.16, with interest from August 15, 1910.

We further find that the rate of 36 cents per 100 pounds claimed by defendants on the remaining shipments was unjust and unreasonable so far as it exceeded 14 cents per 100 pounds for the transportation over the Missouri, Kansas & Texas Railway, and so far as it exceeded 17 cents on the ship-

ments prior to December 25, 1909, over the Missouri, Oklahoma & Gulf Railway and the St. Louis, Iron Mountain & Southern Railway, and so far as it exceeded 14 cents on shipments over the latter route after December 25, 1909. The payments on these several shipments having been less than the amounts here found to be just and reasonable, the carriers should collect the amounts due thereon.

The record indicates, as noted, that there is no trade name or commercial designation for the commodity here in question; and we deem it best to leave the description of this commodity, in the first instance, to defendants, who are doubtless able to so amend their tariffs as to establish the rates above found reasonable in such language as will not lend itself to misunderstanding or afford opportunities for misbilling. If the tariffs are not amended within sixty days so as to conform to our conclusions, an order respecting the rates for the future will be entered. An award of reparation will be made at this time.

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**Government's Exhibit 100.**

4	Saturday, March 31, 1917.				5
Car	Keiffer	79.5	25+	437	
Car	Keiffer	80.7	25+	434	
Car	Keiffer	80.1	25+	1369	
Car	Keiffer	79.4	25+	1624	
Car	Keiffer	80.0	25+	1021	
Car	Keiffer	78.3	25+	1211	
Car	Keiffer	78.3	25+	329	
Car	Keiffer	78.9	25+	1150	
Car	Keiffer	79.0	25+	1718	
Car	Keiffer	79.5	25+	915	
Car	Keiffer	78.7	25+	1239	
Car	Keiffer	78.6	25+	251	
Car	Keiffer	79.1	25+	1137	

24	Tuesday, April 10, 1917.					25
Cars	805	Gasoline	39995	60.9	25+	1148
Cars		Ptrs Naps	11348	54.9	25+	1368
Cars		Ptrs Naps	11348	54.8	25+	1229
Cars		Ptrs Naps	11348	54.8	25+	434
Cars		Ptrs Naps	11348	54.9	25+	1321
Cars	805	P.M.G.	40029	58.0	25+	1370
Cars	838	P.M.G.	40046	58.0	25+	1378

1384 GULF REFINING COMPANY, A CORPORATION, vs.

30	Thursday, April 12, 1917.				31
Car	Keiffer	78.0	25+		408
Car	Keiffer	75.1	25+		911
Car	Keiffer	75.6	25+		1049
Car	Keiffer	76.3	25+		1319
Car	Keiffer	76.0	25+		410
Car	Keiffer	77.1	25+		1613
Car	Keiffer	76.6	25+		1228
Car	Keiffer	78.0	25+		1272
Car	Keiffer	74.5	25+		2028
Car	Keiffer	76.6	25+		2019
Car	Keiffer	78.0	25+		236
Car	Keiffer	78.1	25+		1015
Car	Keiffer	76.8	25+		1112
Car	Keiffer	77.6	25+		1156

42	Tuesday, April 17, 1917.				43
Cars	Keiffer	75.9	25+		924
Cars	Keiffer	75.0	25+		1949
Cars	Keiffer	78.0	25+		1952
Cars	Keiffer	74.6	25+		1247
Cars	Keiffer	74.0	25+		1086
Cars	Keiffer	76.4	25+		1611
Cars	Keiffer	76.0	25+		1954
Cars	Keiffer	76.9	25+		1953
Cars	Keiffer	74.6	25+		1950
Cars	Keiffer	77.0	25+		1602
Cars	Keiffer	74.4	25+		1006
Cars	Keiffer	76.3	25+		368
Cars	Keiffer	75.9	25+		1034
Cars	Keiffer	75.7	25+		1951

50	Thursday, April 19, 1917.				51
Keiffer Cars	75.6	25+			985
Keiffer Cars	74.1	25+			1065
Keiffer Cars	75.7	25+			449
Keiffer Cars	75.3	25+			2029
Keiffer Cars	75.0	25+			2006
Keiffer Cars	74.7	25+			328
Keiffer Cars	74.6	25+			335
Keiffer Cars	74.7	25+			1251

54	Saturday, April 21, 1917.				55
838	Pts Nap 7626	55.1	25+		1946

## UNITED STATES OF AMERICA.

1385

838	Pts Nap	7626	55.0	25+	1960
838	Pts Nap	7626	55.1	25+	1945
838	Pts Nap	7626	55.0	25+	1948
838	Pts Nap	7626	55.3	25+	1965

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66                      Saturday, April 28, 1917.                      67

511	Navy Gasoline	64.0	25+
520	Gasoline	60.0	25+
805	Gasoline	61.5	25+
857	Gasoline	60.0	25+
829	Crude Naphtha	52.9	

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68				69
Car	Keiffer	74.3	25+	1006
Car	Keiffer	74.4	25+	1023
Car	Keiffer	78.8	25+	1209

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80                      Thursday, May 3, 1917.                      81

Car	Keiffer	75.6	25+	1206
Car	Keiffer	75.7	25+	1061
Car	Keiffer	75.7	25+	1960
Car	Keiffer	75.7	25+	325
Car	Keiffer	75.6	25+	1113
Car	Keiffer	75.8	25+	900
Car	Keiffer	75.2	25+	1134
Car	Keiffer	75.3	25+	1945
Car	Keiffer	74.9	25+	1946
Car	Keiffer	75.2	25+	1948
Car	Keiffer	75.1	25+	426
Car	Keiffer	74.9	25+	1965
Car	Keiffer	75.5	25+	960

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94                      Thursday, May 10, 1917.                      95

Car	Keiffer	78.9	25+	1321
Car	Keiffer	77.5	25+	437

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100                      Saturday, May 12, 1917.                      101

Car	Keiffer	76.0	25+ )	620A
Car	Keiffer	75.3	25+ )	428
Car	Keiffer	77.0	25+ )	422
Car	Keiffer	77.6	25+ )	1368
Car	Keiffer	76.9	25+ )	1237

1386 GULF REFINING COMPANY, A CORPORATION, vs.

Car	Keiffer	77.2	25+)	1083
Car	Keiffer	73.2	25+)	1962
Car	Keiffer	73.3	25+)	Over at 95 1961
Car	Keiffer	76.7	25+)	Dry at 363 1178
Car	Keiffer	73.9	18+)	1955
Car	Keiffer	73.7	25+)	2012
Car	Keiffer	76.6	25+)	620B
Car	Keiffer	73.4	25+)	1966
Car	Keiffer	76.2	25+)	620C
Car	Keiffer	73.3	25+)	1957
Car	Keiffer	73.6	25+)	1967

110	Thursday, May 17, 1917.				111
Car	Keiffer	81.2	19+	GERR	1041
Car	Keiffer	80.9	20+	WF&NW	4132
Car	Keiffer	76.2	25+		1976
Car	Keiffer	74.0	25+		900
Car	Keiffer	76.1	25+		1227
Car	Keiffer	76.5	25+		1973

128	Tuesday, May 29, 1917.				129
Cars	838	Painters Naptha	7626 54.8	25+	1945
Cars	838	Painters Naptha	7626 54.8	25+	1979
Cars	838	Painters Naptha	7626 54.8	25+	1968
Cars	838	Painters Naptha	7626 54.7	25+	1954
Cars	838	Painters Naptha	7626 54.7	25+	1945
Cars	838	Painters Naptha	7626 54.8	25+	1982
Cars	838	Painters Naptha	7626 54.8	25+	1978
Cars	838	Painters Naptha	7626 54.8	25+	1965
Cars	838	Painters Naptha	7626 54.8	25+	1946
Cars	838	Painters Naptha	7626 54.8	25+	1953

132					133
Cars	Keiffer	73.9	25+		1859
Cars	Keiffer	60.5	+17	"C"	621
Cars	Keiffer	70.7	25+		1068
Cars	Keiffer	74.2	25+		1321
Cars	Keiffer	70.0	+15	"B"	621
Cars	Keiffer	70.6	B O	"A"	621
Cars	Keiffer	70.6	25+		368
Cars	Keiffer	74.3	25+		1080
Cars	Keiffer	72.2	25+		1015

136	Thursday, May 31, 1917.				137
Cars	Keiffer	74.9	25+ Car #	2029	



## UNITED STATES OF AMERICA.

1387

Cars	Keiffer	74.5	25+	Car	1113
Cars	Keiffer	74.5	25+		1278
Cars	Keiffer	75.2	25+	Car	#1327
Cars	Keiffer	74.4	25+	Car	1270
Cars	Keiffer	70.1	25+		843
Cars	Keiffer	75.5	25+		1981
Cars	Keiffer	61.9	25+		808

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150                      Tuesday, June 5, 1917.                      151

838	Ptrs. Nap.	11348	54.9	25+	368
838	Ptrs. Nap.	11348	54.8	25+	1174
838	Ptrs. Nap.	11348	54.8	25+	1952
838	Ptrs. Nap.	11348	54.7	25+	335
838	Ptrs. Nap.	7626	54.7	25+	1951
338	Ptrs. Nap.	7626	54.6	25+	1225
838	Ptrs. Nap.	7626	54.7	25+	1727
838	Ptrs. Nap.	7626	54.6	25+	1851
838	Ptrs. Nap.	7626	54.7	25+	1950
838	Ptrs. Nap.	7626	54.6	25+	1624

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152                      Thursday June 7, 1917.                      153

520	Navy Gasoline	61.8			140-361
511	Gasoline	61.0			133-390
805	Gasoline	61.9			112-394
957	Gasoline	61.2			127-370
829	Crude Naphtha	MT			
838	Pts. Naphtha	54.0			210-410
805-838	Gasoline 40819	60.5	25+		1974

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158                      Saturday, June 9, 1917.                      159

Car	Keiffer	73.5	25+		1788
Car	Keiffer	74.3	25+	1782	1732
Car	Keiffer	75.3	25+		150
Car	Keiffer	73.3	25+		1855
Car	Keiffer	75.0	25+		1333
Car	Keiffer	72.9	25+		1780
Car	Keiffer	73.5	25+		1957
Car	Keiffer	73.5	25+		1955
Car	Keiffer	75.2	25+		1774
Car	Keiffer	71.4	25+		1366

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164                      Tuesday, June 12, 1917.                      165

Cars	Keiffer	73.4	25+		1966
Cars	Keiffer	70.7	17+		159

1388 GULF REFINING COMPANY, A CORPORATION, vs.

Cars	Keiffer	74.8	25+	1251
Cars	Keiffer	74.2	25+	1377
Cars	Keiffer	72.8	25+	1232
Cars	Keiffer	74.1	25+	1026
Cars	Keiffer	74.0	25+	2014
Cars	Keiffer	74.4	25+	985
Cars	Keiffer	74.0	25+	1034
Cars	Keiffer	74.7	25+	1378
Cars	Keiffer	73.3	25+	1859
Cars	Keiffer	74.3	25+	960
Cars	Keiffer	73.6	25+	2022

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168 Thursday, June 14, 1917. 169

Car	Keiffer	76.3	25+	1866
Car	Keiffer	75.0	25+	1400
Car	Keiffer	74.9	25+	1706
Car	Keiffer	76.8	25+	1268
Car	Keiffer	76.4	25+	1218
Car	Keiffer	73.9	25+	1946
Car	Keiffer	76.0	25+	2010
Car	Keiffer	74.4	25+	1209
Car	Keiffer	75.9	25+	1040
Car	Keiffer	74.4		1743
Car	Keiffer	74.7		1984
Car	Keiffer	75.7		1437
Car	Keiffer	75.8		1865

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172 Saturday, June 16, 1917. 173

Car	Keiffer	74.8	25+	2029
Car	Keiffer	75.5	25+	1869
Car	Keiffer	75.0	25+	1775
Car	Keiffer	76.3	25+	1945
Car	Keiffer	75.8	25+	1871
Car	Keiffer	75.5	25+	1860
Car	Keiffer	75.0	25+	1270
Car	Keiffer	75.3	25+	1870
Car	Keiffer	77.3	25+	1981
Car	Keiffer	75.6	25+	1864
Car	Keiffer	75.5	25+	1959
Car	Keiffer	74.9	25+	1861

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182 Thursday, June 21, 1917. 183

520	Navy Gasoline	61.8	25+	137-362
511	Gasoline	58.0	25+	135-392

## UNITED STATES OF AMERICA.

1389

805	Gasoline	64.0	25+	110-385
857	Gasoline	59.3	25+	136-400
929	Crude Naphtha	54.6		

184				185
Car	Unrefined Naphtha	74.7	25+	1857-1206

230	Saturday, July 14, 1917.			231
520	Navy Gasoline	61.6	25+	138-357
511	Gasoline	58.7	25+	135-388
805	Gasoline	59.5	22+	135-400
857	Gasoline	MT		MT
829	Crude Naphtha	MT		MT

232				233
Car	Unrefined Naphtha	75.3	23+	1268
Car	Unrefined Naphtha	71.1	22+	1037
Car	Unrefined Naphtha	71.9	21+	449

234	Sunday July 15, 1917.			235
520	Navy Gasoline	MT		MT
511	Gasoline	58.9	25+	
805	Gasoline	66.3	24+	2 Filt.
857	Gasoline	MT		MT

234				235
Car	Unrefined Naphtha	76.1	18+	1220
Car	Unrefined Naphtha	76.3	18+	1743

250	Saturday, July 21, 1917.			251
520	Navy Gasoline	61.7	25+	138-358
511	Gasoline	58.4	25+	131-388
805	Gasoline	62.2	25+	140-376
838	Painters Naphtha	53.7	25+	206-416
829	Crude Naphtha	53.6		
805-838	60° Gasoline 41296	60.3	25+	1980

252				253
Car	Unrefined Naphtha	76.5	25+	1946
Car	Unrefined Naphtha	75.5	25+	1855
Car	Unrefined Naphtha	75.3	25+	1852

302	Saturday, August 11, 1917.			303
520	Navy Gasoline	61.4	25+	136 36 95%

1390 GULF REFINING COMPANY, A CORPORATION, vs.

511	Gasoline	58.1	25+	143-390
805	Gasoline	62.1	25+	138-384
838	Painters Naphtha	54.0	25+	139-361
829	Crude Naphtha	52.1		
805-838	Gasoline	42046 58.5	25+	1953
805-838	Gasoline	42075 58.4	25+	Car No. 1970
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304				305
Car	Unrefined Naphtha	76.6	21+	1245
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304				305
Car	Unrefined Nap.	73.7	25+	1033
Car	Unrefined Nap.	74.5	25+	1706
Car	Unrefined Nap.	74.2	25+	1708
Car	Unrefined Nap.	74.2	25+	1206
<hr/>				
308	Tuesday, August 14, 1917.			309
520	Navy Gasoline	61.5	25+	140-364 95%
511	Gasoline	58.1	25+	138-394
805	Gasoline	61.5	25+	126-396
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310				311
Cars	Unrefined Naphtha	73.8	25+	1271
<hr/>				
344	Thursday, Aug. 30, 1917.			345
520	Navy Gasoline	61.2	25+ Over @ 138	Dry @ 360 95%
511	Gasoline	57.3	25+ Over @ 148	Dry @ 400
805	Gasoline	62.0	25+ Over @ 132	Dry @ 396
357	Painters Naphtha	53.6	25+ Over @ 200	Dry @ 410
838	Painters Naphtha	54.3	25+ Over @ 206	Dry @ 412
<hr/>				
346				347
805-838	Gasoline	42320 57.5	25+	F 1978
805-838	P. M. Gasoline	42317 57.5	25+	F 1979
838	Painters Naphtha	11348 54.2	25+	1974
838	Painters Naphtha	11348 54.2	25+	1963
838	Painters Naphtha	11348 54.2	25+	1948
<hr/>				
356	Wednesday, 9-5-17.			357
520	Navy Gasoline	61.2	25+ Over @ 150	Dry @ 360 95%
511	Gasoline	57.2	25+ Over @ 145	Dry @ 400
512	Gasoline	57.1	25+ Over @ 150	Dry @ 400
305	Gasoline	62.8	25+ F Over @ 100	Dry @ 390
838	Pts. Naphtha	54.5	25+ Over @ 200	Dry @ 412

## UNITED STATES OF AMERICA.

1391

358						359
805-838	Gasoline	42458	57.0	25+	F	428
838	Pts. Nap.	7626	54.3	25+	F	1863
838	Pts. Nap.	7626	54.5	25+	F	1378
838	Pts. Nap.	7626	54.5	25+	F	1424
838	Pts. Nap.	7626	54.5	25+	F	1153
838	Pts. Nap.	7626	54.5	25+	F	1351

## Government's Exhibit 101.

2	Friday, August 10, 1917.					3
520	Navy Gasoline	61.5	25+			
511	Gasoline	58.1	25+			
805	Gasoline	61.6	25+			
838	Painters Naptha	54.1	25+			
4						5
Car	Unrefined Naptha	73.6	25+			956
Car	Unrefined Naptha	74.1	25+			2000
Car	Unrefined Naptha	73.5	25+			1970
Car	Unrefined Naptha	73.0	25+			1378
Car	Unrefined Naptha	73.8	25+			1321
338	Painters Nap. 7626	54.5	25+			1009
838	Painters Nap. 7626	54.3	25+			1740
838	Painters Nap. 7626	54.3	25+			1857
838	Painters Nap. 7626	54.3	25+			1225
838	Painters Nap. 7626	54.1	25+			1108
805-838	Gasoline 41970	58.8	25+	F EBP		1430
805-838	Gasoline 41999	58.8	25+	F EBP		1850
805-838	Gasoline 42004	57.8	25+	F EBP		1333

8	August 13, 1917, Monday.					9
838	Pts Nap.	11348	54.3	25+	OK GRX	1963
338	Pts Nap.	7626	54.3	25+	OK GRX	1037
838	Pts Nap.	7626	54.3	25+	OK GRX	1723
838	Pts Nap.	7626	54.3	25+	OK GRX	1981
838	Pts Nap.	7626	54.3	25+	OK GRX	1716
838	Pts Nap.	11348	54.4	25+	OK GRX	915
838	Pts Nap.	7626	54.3	25+	OK GRX	1759
838	Pts Nap.	11348	54.4	25+	OK GRX	939
838	Pts Nap.	7626	54.3	25+	OK GRX	1950
838	Pts Nap.	7626	54.3	25+	OK GRX	1006
838	Pts Nap.	11348	54.5	25+	OK GRX	1437
838	Pts Nap.	11348	54.5	25+	OK GRX	1979
838	Pts Nap.	11348	54.3	25+	OK GRX	1860

1392 GULF REFINING COMPANY, A CORPORATION, vs.

14 Friday, August 17, 1917 15

520	Navy Gasoline	62.5	25+	140-362
511	Gasoline	58.7	25+	146-400
805	Gasoline	60.8	25+	130-407
829	Crude Naphtha	54.4		

16 17

Cars	Unrefined Naphtha	74.0	25+	924
Cars	Unrefined Naphtha	73.9	25+	1728
Cars	Unrefined Naphtha	73.4	25+	1721
Cars	Unrefined Naphtha	74.6	25+	1774
Cars	Unrefined Naphtha	74.7	25	1798
Cars	Unrefined Naphtha	76.4	20+	2022

20 Monday, August 20, 1917. 21

520	Navy Gasoline	60.8	25+	Over at 140	Dry 362	94%
511	Gasoline	58.3	25+	Over at 150	Dry 400	
805	Gasoline	61.3	25+	Over at 140	Dry 374	

24 25

Car	Unrefined Naphtha	75.8	25+	1366
Car	Unrefined Naphtha	75.4	25+	1865
Car	Unrefined Naphtha	77.5	20+	1729

Wednesday, August 29, 1917.

Painters Naptha	7626	54.0	25+	1854
Painters Naptha	7626	53.9	25+	1858
Painters Naptha	7626	53.9	25+	1966

48 Friday, August 31, 1917. 49

520	Navy Gasoline	61.2	25+	Over at 145	Dry at 360	97%
511	Gasoline	57.5	25+	Over at 140	Dry at 395	
805	Gasoline	62.1	25+	Over at 110	Dry at 394	

50 51

Car	Unrefined Naphtha	72.3	25+	1245
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68 Tuesday, Sept. 11th, 1917. 69

520	Navy Gasoline	60.9	25+	NG Over 136	Dry 360-95
511	Gasoline	57.0	25+	NG Over 140	Dry 398
512	Gasoline	57.0	25+	NG Over 150	Dry 395
805	Gasoline	60.9	25+	NG Over 125	Dry 400
838	Ptrs. Naphtha	54.7	+25	FNG Over 197	Dry 417

## UNITED STATES OF AMERICA.

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70

838	Ptrs. Nap.	7626	54.7	25+ F	1054
838	Ptrs. Nap.	7626	54.8	25+ F	1977
838	Ptrs. Nap.	7626	54.7	25+ F	1984
838	Ptrs. Nap.	7626	54.9	25+ F	961
838	Ptrs. Nap.	7626	54.6	25+ F	1852
838	Ptrs. Nap.	7626	54.8	25+ F	1981
805-838	Gasoline	42522	57.0	25+	1949
805-838	Gasoline	42540	57.1	25+	1033

71

82

Tuesday, September 18th, 1917.

83

520	Navy Gasoline	61.2	25+	140	360	95%
512	Gasoline	57.0	25+ F	148	393	
805	Gasoline	64.2	25+ F	122	393	
857	Gasoline	58.0	25+	156	382	
838	Painters Naptha	53.4	25+	195	428	

84

Tuesday, September 18, 1917.

85

805-838	Gasoline	42654	57.1	25+ F	1953
838	Ptrs. Nap.	11348	54.0	25+ F	422
838	Ptrs. Nap.	11348	54.0	25+ F	1605
838	Ptrs. Nap.	11348	53.6	25+ F)	1083
838	Ptrs. Nap.	11348	53.6	25+ F) OK	1957
838	Ptrs. Nap.	11348	53.6	25+ F) EBP	1148
838	Ptrs. Nap.	7626	54.0	25+ F	1967
838	Ptrs. Nap.	7626	54.0	25+ F	1865
838	Ptrs. Nap.	7626	53.6	25+ F)	1606
838	Ptrs. Nap.	7626	53.6	25+ F) OK	1052
838	Ptrs. Nap.	7626	53.6	25+ F) EBP GP—	603
838	Ptrs. Nap.	7626	53.6	25+ F)	1871

146

Monday, October 15, 1917.

147

838	Ptrs. Nap.	7626	53.0	25+ F	1864
838	Ptrs. Nap.	7626	53.0	25+ F	1254
838	Ptrs. Nap.	7626	54.0	25+ F	606
838	Ptrs. Nap.	7626	54.5	25+ F	1789
838	Ptrs. Nap.	7626	54.5	25+ F	1127
838	Ptrs. Nap.	7626	54.3	25+ F	1871

174

Tuesday, October 30, 1917.

175

520	Navy Gasoline	60.8	25+	104-362	95%
511	Gasoline	57.6	25+	124-412	
512	Gasoline	59.3	25+	120-400	



1394 GULF REFINING COMPANY, A CORPORATION, vs.

805	Gasoline	64.4	25+	102-394	
857	Gasoline	58.2	25+		
176					177
Car	Unrefined Naphtha	80.0	20+		926
Car	Unrefined Naphtha	76.2	25+		1127

180 Thursday, November 1, 1917. 181

520	Navy Gasoline	60.8	25+	107-365	96%
511	Gasoline	61.2	25+	135-396	
805	Gasoline	60.8	25+	112-397	
857	Gasoline	57.8	25+	140-396	
838	Painters Naphtha	54.1	25+	182-432	
829	Crude Naphtha	55.4			
805-838	60° Gasoline	43300	60.4	25+	900
805-838	60° Gasoline	43346	60.4	25+	1400
805-838	60° Gasoline	43347	60.4	25+	939
805-838	60° Gasoline	43372	60.5	25+	1216
805-838	60° Gasoline	43373	60.4	25+	1079
838	Painters Naphtha	7626	54.5	25+	629
838	Painters Naphtha	7626	54.3	25+	628
838	Painters Naphtha	7626	54.2	25+	1965
838	Painters Naphtha	7626	54.2	25+	1949
838	Painters Naphtha	7626	54.5	25+	627
838	Painters Naphtha	7626	54.5	25+	626
Car	Unrefined Naphtha	73.6	25+		1366
Car	Unrefined Naphtha	73.5	25+		1978

184 Saturday, November 3, 1917. 185

520	Navy Gasoline	60.7	25+	148-366	97%
511	Gasoline	58.2	25+	165-415	
805	Gasoline	64.1	25+	102-400	
857	Gasoline	57.4	25+	145-411	
838	Painters Naphtha	54.2	25+	190-430	
805-838	60° Gasoline	43381	60.7	25+	Car # 1366

186					187
Car	Unrefined Naphtha	75.2	25+		1774
Car	Unrefined Naphtha	81.3	19+		1981

188 Sunday 11-4-17 189

805	Gasoline	65.0	25+	98-388	
857	Gasoline	57.2	25+	149-397	
838	Painters Naphtha	54.1	25+	189-431	

## UNITED STATES OF AMERICA.

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188

189

838	Painters Naptha	7626	54.5	25+	Car # 2105
838	Painters Naptha	7626	54.4	25+	Car # 2101
838	Painters Naptha	7626	54.5	25+	Car # 2116
838	Painters Naptha	7626	54.1	25+	Car # 2112
838	Painters Naptha	7626	54.1	25+	Car # 2113
838	Painters Naptha	7626	54.5	25+	Car # 2104
838	Painters Naptha	11348	54.2	25+	Car # 2106
838	Painters Naptha	11348	54.1	25+	Car # 2102
805-838	60 Gasoline	43381	60.1	25+	Car # 1868

206

Sunday, November 11, 1917.

207

805	Gasoline	66.3	25+	103-390
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206

207

Car	Unrefined Naptha	74.8	25+	Car # 1424
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212

Thursday 11-15-17

213

520	Navy Gasoline	60.8	25+	148	363	97%
511	Gasoline	57.7	25+	138	-	402
512	Gasoline	59.7	25+	132	-	398
805	Gasoline	67.8	25+	105		395
857	Gasoline	58.6	25+	132		401
838	Painters Naptha	54.8	25+	182		418

214

215

805-838	60° Gasoline	43634	60.0	25+	1780
805-838	60° Gasoline	43624	60.3	25+	1983
805-838	60° Gasoline	43335	60.2	25+	1624
805-838	60° Gasoline	43542	60.0	25+	1254
805-838	60° Gasoline	43624	60.1	25+	1978
905-838	60° Gasoline	43544	60.3	25+	1040
805-838	60° Gasoline	43577	60.3	25+	1949
805-838	60° Gasoline	43624	60.3	25+	1864
805-838	60° Gasoline	43439	60.0	25+	437
805-838	60° Gasoline	43624	60.1	25+	1977
838	Painters Naptha	7626	54.8	25+	GP— 603
838	Painters Naptha	7626	54.7	25+	GP— 606
838	Painters Naptha	7626	54.8	25+	GP— 626
838	Painters Naptha	7626	54.7	25+	GP— 627
838	Painters Naptha	7626	54.7	25+	GP— 600

220

Saturday, November 17, 1917.

221

838	Pts. Nap.	11348	55.0	25+	2186
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1396 GULF REFINING COMPANY, A CORPORATION, vs.

838	Pts. Nap.	11348	55.0	25+	2185
838	Pts. Nap.	11348	55.0	25+	2105
838	Pts. Nap.	11348	55.0	25+	2184
838	Pts. Nap.	11348	55.0	25+	2116
838	Pts. Nap.	11348	55.0	25+	2104

248 Tuesday, December 4, 1917. 249

511	Gasoline	57.9	25+	130	422
512	Gasoline	60.0	25+	121	405
520	Gasoline	57.3	25+	154	406
805	Gasoline	64.2	25+	105	406
857	Gasoline	71.3	23+	88	398
838	Painters Naptha	53.9	25+	194	432

250 251

805-838	Ptrs. Nap.	7626	54.2	25+ F	Car # G.P. 602
805-838	Ptrs. Nap.	7626	54.0	25+ F	Car # G.P. 626
805-838	Ptrs. Nap.	7626	54.3	25+ F	Car # G.P. 609
805-838	Ptrs. Nap.	7626	54.0	25+ F	Car # G.P. 600
805-838	Ptrs. Nap.	7626	54.0	25+ F	Car # G.P. 603
805-838	Ptrs. Nap.	7626	54.0	25+ F	Car # G.P. 627

262 Tuesday, December 11, 1917. 263

838	Ptrs. Nap.	7626	54.6	25+	2154
838	Ptrs. Nap.	7626	54.7	25+	2166
838	Ptrs. Nap.	7626	54.7	25+	2167
838	Ptrs. Nap.	7626	54.6	25+	2169
838	Ptrs. Nap.	7626	54.6	25+	2179
838	Ptrs. Nap.	7626	54.8	25+	2181

268 Saturday, December 15, 1916. 269

				Over	Dry
511	Gasoline	57.6	25+	140	412
512	Gasoline	60.0	25+	104	404
520	Gasoline	59.6	25+	111	422
805	Gasoline	62.0	25+	104	402
857	Gasoline	58.2	25+	133	415
838	Painters Naptha	53.5	25+	185	438

306 Saturday, January 5, 1918. 307

838	Painters Nap.	7626	55.2	25+ F	2183
838	Painters Nap.	7626	55.2	25+ F	2175

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838	Painters Nap.	7626	55.3	25+ F	2109
838	Painters Nap.	7626	55.3	25+ F	2106
838	Painters Nap.	7626	55.4	25+ F	2113
838	Painters Nap.	7626	55.4	25+ F	2178

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316 Thursday, January 10, 1918. 317

805-838	Gasoline	44056	60.4	25+	1451
838	Ptrs Nap	11348	56.1	25+	2173
838	Ptrs Nap	11348	56.0	25+	2154
838	Ptrs Nap	11348	55.7	25+	2107
838	Ptrs Nap	11348	55.6	25+	2150
838	Ptrs Nap	11348	55.7	25+	2148
838	Ptrs Nap	11348	55.7	25+	2192
838	Ptrs Nap	7626	56.2	25+	2152
838	Ptrs Nap	7626	56.2	25+	2161

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338 Thursday, January 24, 1918. 339

512	Gasoline	60.0	25+	140	391
805	Gasoline	59.8	25+	132	406
857	Gasoline	76.5	25+	63	356
838	Ptrs Nap	55.1	25+	180	397

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340 341

805-838	Gasoline	44481	60.8	25+	1445
805-838	Gasoline	44481	60.0	25+	1243
805-838	Gasoline	44481	60.3	25+	1501
805-838	Gasoline	44481	60.3	25+	1354
805-838	Gasoline	44481	60.1	25+	1767
805-838	Gasoline	44703	60.5	25+	1233
805-838	Gasoline	44703	60.3	25+	1613
805-838	Gasoline	44703	60.1	25+	1247
805-838	Gasoline	44703	60.1	25+	1774
805-838	Gasoline	44703	60.5	25+ Hazy	1052

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340 341

838	Ptrs. Nap.	11348	55.6	25+ OK by Mr. EBP	2123
838	Ptrs. Nap.	11348	55.8	25+ OK by Mr. EBP	2100
838	Ptrs. Nap.	11348	55.0	25+ OK by Mr. EBP	2101
838	Ptrs. Nap.	11348	55.8	25+ OK by Mr. EBP	2162
838	Ptrs. Nap.	11348	55.3	25+ OK by Mr. EBP	2146

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344 Saturday, January 26, 1918. 345

511	Gasoline	61.5	25+	110-402
512	Gasoline	60.0	25+	133-396

**1398 GULF REFINING COMPANY, A CORPORATION, vs.**

805	Gasoline	61.7	25+	128-396
857	Gasoline	77.5	22+	79-361
838	Ptrs. Nap.	55.1	25+	202-395
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346				347
838	Ptrs. Nap.	7626	55.0	25+ 2114
838	Ptrs. Nap.	7626	55.1	25+ 2166
838	Ptrs. Nap.	7626	54.9	25+ 2110
838	Ptrs. Nap.	7626	55.0	25+ 2163
905-838	Gasoline	11348	54.8	25+ 2169
905-838	Gasoline	11348	54.9	25+ 2167
905-838	Gasoline	11348	54.9	25+ 2102
905-838	Gasoline	11348	54.7	25+ 2153
905-838	Gasoline	11348	55.0	25+ 2158
905-838	Gasoline	11348	55.1	25+ 2155
905-838	Gasoline	11348	54.8	25+ 2181
905-838	Gasoline	11348	55.0	25+ 2179

**Government's Exhibit 102.**

22	Wednesday, September 19, 1917.			23
520	Navy Gasoline	61.0	25+	138-360 95%
512	Gasoline	57.0	25+	145-395
805	Gasoline	64.5	25+	101-388
857	Gasoline	58.5	25+	138-373
829	Crude Naphtha	53.0		

24				25
Car	Unrefined Nap.	71.0	25+	1978
Car	Unrefined Nap.	71.6	25+	1786
Car	Unrefined Nap	71.0	25+	1710

28	Friday, September 21st, 1917.			29
838	Painters Naphtha	7626	53.5	25+ A617
838	Painters Naphtha	7626	53.5	25+ B617
838	Painters Naphtha	7626	54.0	25+ C617
838	Painters Naphtha	7626	53.8	25+ 1710
838	Painters Naphtha	7626	53.7	25+ 1978
838	Painters Naphtha	7626	53.7	25+ 1786

34	Monday, September 24th, 1917.			35
838	Pts. Nap.	7626	53.3	25+ F Car # 1054
838	Pts. Nap.	7626	53.4	25+ F Car # 1981
838	Pts. Nap.	7626	53.3	25+ F Car # 1852

## UNITED STATES OF AMERICA.

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838	Pts. Nap.	7626	53 3	25+ F	Car # 1984
838	Pts. Nap.	7626	53 3	25+ F	Car # 1870
838	Pts. Nap.	7626	53 3	25+ F	Car # 1956
838	Pts. Nap.	7626	53 3	25+ F	Car # 1781
838	Pts. Nap.	7626	53 3	25+ F	Car # 1958
838	Pts. Nap.	7626	53 3	25+ F	Car # 1964
838	Pts. Nap.	7626	53 3	25+ F	Car # 1976

40 Wednesday, September 26th, 1917. 41

838	Painters Naphtha	11348	52.9	25+ F)	Car No. 1387
838	Painters Naphtha	11348	52.8	25+ F)	Car No. 1214
838	Painters Naphtha	11348	52.9	25+ ) O.K.	Car No. 1950
838	Painters Naphtha	11348	52.8	25+ ) by	Car No. 1959
838	Painters Naphtha	11348	52.9	25+ ) G.L.P.	Car No. 1220
838	Painters Naphtha	7626	52.8	25+ )	Car No. 605
838	Painters Naphtha	7626	52.8	25+ )	Car No. 604

48 Monday, October 1, 1917. 49

520	Navy Gasoline	61.0	25+	146-365	95%
511	Gasoline	56.9	25+	157-419	
512	Gasoline	57.0	25+	140-424	
805	Gasoline	62.0	25+	124-395	
857	Gasoline	61.7	25+ F	152-388	
838	Painters Naphtha	52.7	25+ F	201-441	
829	Crude Naphtha	53.2			

50 51

805-838	Gasoline	42744	57.4	25+ F	Car # 1506
805-838	Gasoline	42903	57.3	25+ F	Car # 1135
805-838	Gasoline	42833	57.5	25+ F	Car # 1218
805-838	P.M.G.	42859	57.5	25+ F	Car # 1052
805-838	P.M.G.	42935	57.4	25+ F	Car # 1006
805-838	P.M.G.	42806	57.3	25+ F	Car # 1374
838	Painters Nap.	7626	52.1	25+ F)	Car # 1967
838	Painters Nap.	7626	53.4	25+ F)	OK Car # 606
838	Painters Nap.	7626	52.0	25+ F)	by Car # 1863
838	Painters Nap.	7626	51.9	25+ F)	Mr. Car # 1871
838	Painters Nap.	7626	52.8	25+ F)	G.L.P. Car # 1118
838	Painters Nap.	7626	52.4	25+ F)	Car # 1865
838	Painters Nap.	7626	52.1	25+ F)	Car # 1982

50 51

Cars	Unrefined Naphtha	78.5	22+	1071
Cars	Unrefined Naphtha	78.8	21+	G.P. 600

1400 GULF REFINING COMPANY, A CORPORATION, vs.

66	Sunday, October 7, 1917.				67
805	Gasoline	61.8			120-396
857	Gasoline	64.7			110-382

66					67
Car	Unrefined Naphtha	77.7	+22		1983
Car	Unrefined Naphtha	78.4	22+		1624

72	Monday, October 8th, 1917.				73
838	Pts Nap	11348	52 2	25+F	1983
838	Pts Nap	11348	52 3	25+F	1385
838	Pts Nap	11348	52 3	25+F	924
838	Pts Nap	11348	52 3	25+F	1973
838	Pts Nap	11348	52 2	25+F	1977
838	Pts Nap	11348	52 2	25+F	1860
838	Pts Nap	7626	52 2	25+F	2027
838	Pts Nap	7626	52 3	25+F	1736
838	Pts Nap	7626	52 3	25+F	1108
838	Pts Nap	7626	52 4	25+F	1037
838	Pts Nap	7626	52 3	25+F	602
838	Pts Nap	7626	52 4	25+F	1966

88	Sunday, October 14, 1917.				89
520	Navy Gasoline	60.7	25+		
511	Gasoline	57.5	25+		120-415
512	Gasoline	57.5	25+		141-412
805	Gasoline	62.7	+25		110-392
857	Gasoline	63.3	+25		106-388

88					89
Car	Unrefined Naphtha	80.5	25+		1864
Car	Unrefined Naphtha	80.4	24+		1254

108	Monday, October 22nd, 1917.				109
838	Ptrs Naphtha	7626	53.9	25+	1947
838	Ptrs Naphtha	7626	54.0	25+	GP 608
838	Ptrs Naphtha	7626	54.0	25+	1037
838	Ptrs Naphtha	7626	53.7	25+	GP 602
838	Ptrs Naphtha	7626	53.6	25+	1966
838	Ptrs Naphtha	7626	53.9	25+	1954



## 1401

112                      Wednesday, October 24th, 1917.                      113

520	Navy Gasoline	60.8	25+	145-360	97%
511	Gasoline	57.6	25+	118-415	
512	Gasoline	57.5	25+	130-420	
805	Gasoline	63.8	25+	100-387	
857	Gasoline	58.4	25+	137-398	
838	Painters Naphtha	53.9	25+	184-436	

114 115

805-838	60° Gasoline	43218	60.5	25+	1950
805-838	60° Gasoline	43219	60.5	25+	1723
805-838	60° Gasoline	43296	60.7	25+	392
838	Painters Nap.	11348	54.0	25+ F	917
838	Painters Nap.	11348	54.5	25+ F	1606
838	Painters Nap.	11348	54.0	25+ F	1745
838	Painters Nap.	11348	54.0	25+ F	1178
838	Painters Nap.	11348	54.6	25+ F	1108

136                      Friday, November 2, 1917.                      137

520	Navy Gasoline	60.7	25+	149-367	97%
511	Gasoline	59.8	25+	131-398	
512	Gasoline	59.5	25+	130-400	
805	Gasoline	61.8	25+	104-399	
857	Gasoline	57.9	25+	147-400	
829	Crude Naphtha	55.1			

138 139

Cars	Unrefined Naphtha	81.8	22+	2022
Cars	Unrefined Naphtha	81.9	19+	1265

140 Monday, November 5th, 1917. 141

520	Navy Gasoline	60.8	25+	157-365	97%
511	Gasoline	Mt			
512	Gasoline	59.6	25+	121-402	
805	Gasoline	65.2	25+	97-386	
857	Gasoline	57.3	25+	120-415	
838	Painters Naphtha	54.4	25+	191-427	

144 — 145

805-838	60 Gasoline	43453	60.0	25+	Car #	956
805-838	60 Gasoline	43358	60.1	25+		1721
805-838	60 Gasoline	43350	60.3	25+		1966
805-838	60 Gasoline	43334	60.3	25+		1870
805-838	60 Gasoline	43348	60.3	25+		1214

1402 GULF REFINING COMPANY, A CORPORATION, vs.

805-838	60 Gasoline	43334	60.2	25+	1851
805-838	60 Gasoline	43374	60.0	25+	1052
805-838	P.M.G.	43331	57.7	25+	1774
805-838	P.M.G.	43497	57.8	25+	1066
805-838	P.M.G.	43491	57.5	25+	1011
805-838	P.M.G.	43344	57.8	25+	1981
805-838	P.M.G.	43345	57.8	25+	1853
805-838	P.M.G.	43286	57.5	25+	1947
838	Painters Naphtha	11348	54.2	25+	1959
838	Painters Naphtha	11348	54.5	25+	1037
838	Painters Naphtha	11348	54.4	25+	2111
838	Painters Naphtha	7626	54.5	25+	G.P. 602

152 Friday, November 9, 1917. 153

520	Navy Gasoline	60.8	25+	158-365	97%
512	Gasoline	59.6	25+	120-405	
805	Gasoline	65.5	25+	97-364	
857	Gasoline	57.8	+24	148-405	
838	Painters Naphtha	54.5	25+	180-417	
829	Crude Naphtha	56.3			
805-838	60 Gasoline	43375	60.4	25+	Car No. 1970

154 155

Cars	Unrefined Naphtha	75.2	25+	Car # 610A
Cars	Unrefined Naphtha	75.7	25+	Car # 610B
Cars	Unrefined Naphtha	75.8	25+	Car # 610C
Cars	Unrefined Naphtha	75.5	25+	Car # 2027

176 Monday, November 19th, 1917. 177

838	Pts Nap	11348	54.9	25+	2180
838	Pts Nap	11348	54.9	25+	2181
838	Pts Nap	11348	54.8	25+	2187
838	Pts Nap	11348	54.8	25+	2188
838	Pts Nap	11348	54.9	25+	2171
838	Pts Nap	11348	54.9	25+	2154
838	Pts Nap	7626	54.9	25+	1128
838	Pts Nap	7626	54.8	25+	GP 625
838	Pts Nap	7626	54.8	25+	GP 630

178 Wednesday, November 21st, 1917. 179

520	Navy Gasoline	60.6	25+	
511	Gasoline	59.5	25+	122-415
512	Gasoline	59.8	25+	118-408
805	Gasoline	68.1	25+	108-390

## UNITED STATES OF AMERICA.

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857	Gasoline	62.3	25+	119-398
838	Pts Naphtha	54.8	25+	190-418

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805-838	60 Gasoline	43506	60.1	25+	1871
805-838	60 Gasoline	43504	60.1	25+	1979
838	Pts Nap	7626	54.6	25+	2183
838	Pts Nap	7626	55.0	25+	2165
838	Pts Nap	7626	55.0	25+	2164

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184 Friday, November 23rd, 1917. 185

511	Gasoline	57.0	25+	130-408
512	Gasoline	60.0	25+	108-409
520	Gasoline	57.4	25+	142-408 96%
805	Gasoline	66.8	25+	110-384
857	Gasoline	62.1	25+	114-399
855	S C Gasoline	60.9	25+	136-346 8.6%
838	Pts Naphtha	54.9	25+	188-398

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805-838	60° Gasoline	43594	60.7	25+	610a
805-838	60° Gasoline	43594	60.7	25+	610B
805-838	60° Gasoline	43594	60.7	25+	610C
805-838	60° Gasoline	43545	60.7	25+	620A
805-838	60° Gasoline	43545	60.6	25+	620B
805-838	60° Gasoline	43545	60.7	25+	620C
805-838	60° Gasoline	43550	60.7	25+	985
838	Pts Nap	7626	55.0	25+	
838	Pts Nap	7626	55.0	25+	
838	Pts Nap	7626	55.0	25+	

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196 Wednesday, November 28, 1917. 197

838	Painters Naphtha	7626	54.0	2169
838	Painters Naphtha	7626	54.1	2167
838	Painters Naphtha	7626	54.3	2192
838	Painters Naphtha	7626	54.3	2117
838	Painters Naphtha	7626	54.3	2121
838	Painters Naphtha	7626	54.2	2166

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Monday, December 3, 1917.

838	Painters Naph	11348	54.2	25+	2120
838	Painters Naph	11348	54.2	25+	2124
838	Painters Naph	11348	54.3	25+	2124
838	Painters Naph	11348	54.3	25+	2123

1406 GULF REFINING COMPANY, A CORPORATION, vs.

312	Sunday, January 13, 1918.				313
805	Gasoline	63.5	25+		
857	Gasoline	76.9	+20F		
312					313
Car	Unrefined Naphtha	83.5	22+		2120
Car	Unrefined Naphtha	83.2	22+		2124
328	Sunday, January 20, 1918.				329
Car	Unrefined Naphtha	84.3	21+		2106
Car	Unrefined Naphtha	84.7	23+		2183
328					329
805	Gasoline	59.7	25+		128-397
857	Gasoline	77.2	+22		94-365

Government's Exhibit 103.

GULF REFINING COMPANY

Port Arthur, Texas

Report of Tests Made Sunday, February 3, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Radium	825		+ 24		o o
Gasoline	805	59.2	25+F	NG	120 400
Gasoline	857	78.6	23+	NG	90 370
Painters Naphtha	838	54.1	25+	NG	200 398
S. C. Gasoline	814	62.6	25+		126 3.6%
S. C. Gasoline	815	63.3	25+		108 10.3%
Gasoline Dist.	848	61.7	24+F		140 399
Gasoline Dist.	852	58.2	+25 F		139 401
Gasoline Dist.	844	60.3	+25 F		140 419
Gasoline Dist.	855	59.5	25+		179 426
Pts. Naphtha Dist.	849	54.7	22+		256 438
Pts. Naphtha Dist.	810	53.1	17+		205 400
Pts. Naphtha Dist.	843	53.0	25+		
Unrefined Naphtha	Car 2198	83.2	25+	NG	
Unrefined Naphtha	Car 2119	84.1	25+	NG	
Unrefined Naphtha	Car 1603	84.8	25+	NG	
Unrefined Naphtha	Car 2160	85.2	14+	NG	
Unrefined Naphtha	Car 2182	82.9	25+	NG	
Unrefined Naphtha	Car 2108	84.4	25+	NG	
Unrefined Naphtha	Car 2103	82.2	25+	NG	
Unrefined Naphtha	Car 2177	82.7	25+	NG	

Unrefined Naphtha	Car 2189	84.5	25+	NG
Unrefined Naphtha	Car 2115	85.0	25+	NG
Unrefined Naphtha	Car 2172	82.0	25+	NG
Radium	824	43.5	24+	OK
Sunburst	Fillers 519	46.1	18+	OK

## Report of Tests Made February 4th and 5th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Naph	838 2168	54.2	25+	NG	11348
Painters Naph	838 2170	54.2	25+	NG	11348
Painters Naph	838 2172	54.2	25+	NG	11348
Painters Naph	838 2177	54.1	25+	NG	11348
Painters Naph	838 2182	54.1	25+	NG	11348

## Reports of Tests Made February 8, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
					Over Dry
Gasoline	511	60.7	25+	NG	135 416
Gasoline	512	60.5	25+	NG	117 420
Gasoline	805	62.8	25+	NG	115 396
Gasoline	857	76.4	23+	NG	96 363
Pts. Naphtha	383	54.1	25+	NG	185 418
B. Solar	847	50.2	19+	NG	
S. C. Gas. Dist.	817	63.1	25+		116 390
Gasoline Dist.	855	60.3	25+		140 387
Pts. Naphtha Dist.	843	54.7	25+		187 404
Pts. Naphtha Dist.	849	54.0	19+		240 455
Pts. Naphtha Dist.	810	52.8	+21		200 452
Pts. Naphtha Dist.	923	49.1	+16		
Benzol	924	34.2	19+		
Crude Naphtha	813	54.5			
Crude Naphtha	829	55.8			
Special Kero	884	50.1	25+	OK	
Lusterlite	860	Mt			
[1] Elliott	801	44.8	23+	OK	
Radium	842	Mt			
Radium	835	43.9	+24	OK	
Sunburst	85	46.6	+10	OK	
Sunburst	802	46.1	+20	OK	
Sunburst Dist.	803	45.8	+5		
Lusterlite Dist.	858	46.3	+15		
Radium off color	922	43.5	0		
Sunburst SS Stk.	84	Mt			
Sunburst SS Stk.	830	Mt			

1408 GULF REFINING COMPANY, A CORPORATION, vs.

Lusterlite SS Stk.	859	45.4	x		
Water White Stk.	925	42.7			
Standard White Stk.	837	41.2			
Texas WW Stk.	57	34.3			
Unrefined Naphtha	Car 1957	84.0	18+	NG	
Unrefined Naphtha	Car 1072	84.3	19+	NG	
Lusterlite	825	44.8	23+	OK	
Lusterlite	869 1252	44.8	23+F		44945
Lusterlite	860 2122	34.8	23+F		44929
Lusterlite	860 2111	44.9	23+F		44940
Lusterlite	860 2022	44.8	23+F		44858
Lusterlite	860 1603	44.8	23+F		44890
Unrefined Naphtha	Car 1147	61.3			
Unrefined Naphtha	Car 1959	61.2			
Unrefined Naphtha	Car 2025	59.4			

N. J. Wieman, Inspector.

Report of Tests Made February 12, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts Naphtha	805-838	2178	54.3	25+	7626
Pts Naphtha	805-838	2171	54.3	25+	7626
Pts Naphtha	805-838	2175	54.3	25+	7626
Pts Naphtha	805-838	2164	54.1	25+	7626

Report of Tests Made Monday, February 18, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Naph	838 2105	53.7	25+		11348
Painters Naph	838 2104	53.7	25+		11348
Painters Naph	838 2111	53.2	25+		11348
Painters Naph	838 2116	53.7	25+		11348
Painters Naph	838 2120	53.7	25+		11348

Report of Tests Made February 18th and 19th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts Naphtha	838 2188	54.0	25+	NG	11348
Pts Naphtha	838 2158	54.0	25+	NG	11348
Pts Naphtha	838 2161	53.7	25+	NG	11348
Pts Naphtha	838 2186	54.0	25+	NG	11348
Pts Naphtha	838 2185	54.0	25+	NG	11348

## Report of Tests Made February 25, 1918—Monday.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts. Naphtha	838 2163	53.8	25+		7626
Pts. Naphtha	838 2110	53.8	25+		7626
Pts. Naphtha	838 2166	53.8	25+		7626

## Report of Tests Made Wednesday, February 27, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	511	60.0	25+	NG	
Gasoline	512	59.5	25+	NG	
Gasoline	805	62.6	25+	NG	
Gasoline	857	73.2	+ 25	NG	
Painters Naph.	838	53.2	25+	NG	
Crude Naphtha	829	56.6			
Unrefined Naph.	Car 1400	79.6	25+		
Car Ptrs. Naph.	838 2180	53.5	25+	NG	11348
Car Ptrs. Naph.	838 2171	53.4	25+	NG	11348
Car Ptrs. Naph.	838 2118	53.3	25+	NG	11348
Car Ptrs. Naph.	838 2178	53.5	25+	NG	11348
Car Ptrs. Naph.	838 2160	53.5	25+	NG	11348
Car P.M.G.	805-838 1957	57.4	25+	NG	45256

## Reports of Tests Made Thursday, February 28, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts Naphtha	838 2103	53.3	25+F	NG OK by Mr. JWH	7626
Pts Naphtha	838 2198	53.6	25+F	NG OK by Mr. JWH	7626
Pts Naphtha	838 2164	53.6	25+F	NG OK by Mr. JWH	7626

## Reports of Tests Made, Friday, March 1, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Nap	838 2119	53.1	25+	NG	7626
Painters Nap	2148	53.2	25+	NG	7626
Painters Nap	2115	53.3	25+	NG	7626

## Report of Tests Made, Monday, March 4, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Ptrs Naphtha	838 2151	53.7	25+		11348



1410 GULF REFINING COMPANY, A CORPORATION, US.

Ptrs Naphtha	838	2123	53.6	25+	7626
Ptrs Naphtha	838	2100	53.8	25+	7626
Ptrs Naphtha	838	2155	53.8	25+	7626
Ptrs Naphtha	838	2174	53.7	25+	7626
Ptrs Naphtha	838	2190	53.7	25+	7626
Ptrs Naphtha	838	2156	53.7	25+	7626
Ptrs Naphtha	838	2112	54.0	25+	11348
Ptrs Naphtha	838	2176	53.8	25+	11348

Report of Tests Made, Monday, March 11, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts Naphtha	838 2101	54.1	25+		11348
Pts Naphtha	838 2146	54.0	25+		7626
Pts Naphtha	838 2163	54.1	25+		7626
Pts Naphtha	838 2116	54.1	25+		7626
Pts Naphtha	838 2173	54.5	25+		7626
Pts Naphtha	838 2121	54.0	25+		11348
Pts Naphtha	838 2166	54.4	25+		7626
Pts Naphtha	838 2114	54.6	25+		7626
Pts Naphtha	838 2124	55.2	25+		11348

Report of Tests Made Monday, March 18, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Naphtha	838 GP 403	55.0	24+) OK'd by		7626
Painters Naphtha	838 GP 521	55.1	24+) G. L.		7626
Painters Naphtha	838 2153	55.2	24+) Pritchard		7626

Report of Tests Made Tuesday, March 19, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts Naphtha	2178	55.1	25+		7626
Pts Naphtha	2180	55.5	25+		7626

Report of Tests Made Wednesday, March 20, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Naph.	838 2123	54.8	25+		7626
Painters Naph.	838 2100	55.1	25+		7626
Painters Naph.	838 2147	55.0	25+		7626
Painters Naph.	838 2155	54.6	25+		7626
Painters Naph.	838 2156	54.6	25+		7626

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Painters Naph.	838	2122	54.6	25+	7626
Painters Naph.	838	2190	54.6	25+	7626
Painters Naph.	838	2193	54.4	25+	7626

## Report of Tests Made Thursday, March 21, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Naph.	838 2174	54.6	25+		7626
Painters Naph.	838 2167	54.6	25+		7626

## Report of Tests Made Friday, March 22nd, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Navy Gasoline	520	60.6	25+F	NG	
Navy Gasoline	805	65.8	25+	NG	
Navy Gasoline	857	70.6	25+F	NG	
Painters Naphtha	838	54.0	25+	NG	
Unrefined Naph.	Car 2107	70.1	25+		
Unrefined Naph.	Car 1708	74.6	25+		
Gasoline	805-838 1747	60.1	+25		45443
Gasoline	805-838 1430	60.2	+25		45387
Gasoline	805-838 927	60.2	+25		45401
Gasoline	805-838 1854	60.3	+25		45583
Gasoline	805-838 1786	60.3	+25		45640
Gasoline	805-838 1723	60.2	+25		45589
P.M.G.	805-838 1721	57.0	+25		45460
P.M.G.	805-838 1979	57.2	+25		45459
Painters Naphtha	838 2181	54.0	25+		7626
Painters Naphtha	838 2189	54.0	25+		11348
Painters Naphtha	838 2182	54.0	25+		11348

## Report of Tests Made Saturday, March 23rd, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Navy Gasoline	805	66.5	25+	NG	
Navy Gasoline	857	70.8	+25	NG	
Crude Naphtha	829	56.4			
Pts Naphtha	838	54.1	25+	NG	
Unrefined Naph.	Car 2149	79.8	16+	NG	
Unrefined Naph.	Car 2159	72.0	23+	NG	
Unrefined Naph.	Car 2197	71.1	25+	NG	
Unrefined Naph.	Car 2154	79.0	25+	NG	
Painters Naphtha	838 2150	55.0	25+		11348
Painters Naphtha	838 2168	54.2	25+		11348
Painters Naphtha	838 2177	54.4	25+		11348

1412 GULF REFINING COMPANY, A CORPORATION, vs.

Report of Tests Made Sunday, March 24, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr. Order Nos.
Gasoline	857	70.1	+25	
Unrefined Naphtha	2120	73.8	25+	
Unrefined Naphtha	2116	72.4	25+	

Report of Tests Made Monday, March 25, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr. Order Nos.
Car Painters Naphtha	2113	838	54.5 25+	11348
Car Painters Naphtha	2108	838	54.4 25+	11348
Car Painters Naphtha	2116	838	54.2 25+	11348
Car Painters Naphtha	2120	838	54.2 25+	11348
Car Painters Naphtha	2110	838	54.6 25+	11348
Car Painters Naphtha	2161	838	54.7 25+	7626
Car Painters Naphtha	2105	838	54.8 25+	7626
Car Painters Naphtha	2186	838	54.5 25+	7626
Car Painters Naphtha	2162	838	54.5 25+	7626
Car Painters Naphtha	2104	838	54.6 25+	7626
Car Painters Naphtha	2111	838	54.7 25+	7626
Car Gasoline	1934	805-838	60.4 25+	44510
Car Gasoline	1949	805-838	60.7 25+	45404
Car Gasoline	1961	805-838	60.8 25+	45462
Car Gasoline	2022	805-838	60.7 25+	45608
Car Gasoline	2172	805-838	60.8 25+	45643

Report of Tests Made Monday, April 6, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr. Order Nos.
Ptrs. Naptha	923	1421	50.9 24+)	7626
Ptrs. Naptha	823	1375	50.9 24+)	7626
Ptrs. Naptha	923	1531	50.9 24+)	7626
Ptrs. Naptha	923	952	50.9 24+)	7626
Ptrs. Naptha	923	1979	50.9 24+)	7626
Ptrs. Naptha	923	986	50.9 24+)	7626
Ptrs. Naptha	923	1211	52.8 +25 )	11348
Ptrs. Naptha	923	1947	52.8 25+)	11348
Ptrs. Naptha	923	1402	51.0 +25 )	11348
Ptrs. Naptha	923	1954	52.1 +25 )	11348
Ptrs. Naptha	923	1451	52.3 +25 )	G. L. P. 11348
			) per	
			) Mose	
			) Smith	

## Report of Tests Made Monday, April 8th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr. Order Nos.
Ptrs. Naptha	838	2162	54.3 25+	7626
Ptrs. Naptha	838	2176	54.8 25+	7626
Ptrs. Naptha	838	2107	54.8 25+	7626
Ptrs. Naptha	838	1205	54.6 25+	7626
Ptrs. Naptha	838	2104	54.9 25+	7626
Ptrs. Naptha	838	2112	54.2 25+	7626
Ptrs. Naptha	838	1037	54.8 25+	11348
Ptrs. Naptha	838	1858	55.0 25+	11348
Ptrs. Naptha	838	1764	54.8 25+	11348
Ptrs. Naptha	838	1403	54.3 25+	11348

## Report of Tests Made Tuesday, April 9th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr. Order Nos.
Ptrs. Naptha	838	2175	54.9 25+	11348
Ptrs. Naptha		2116	54.9 25+	11348
Ptrs. Naptha		2168	54.8 25+	7626
Ptrs. Naptha		2150	54.8 25+	7626
Ptrs. Naptha		2189	54.8 25+	7626
Ptrs. Naptha		2160	54.8 25+	7626
Ptrs. Naptha		2182	54.7 25+	7626
Ptrs. Naptha		2177	54.8 25+	7626
Ptrs. Naptha	838	2113	55.5 25+)	11348
Ptrs. Naptha	838	2110	54.9 25+)	Haze 11348
			) OK by	
			) Mr. EBP	
Ptrs. Naptha	838	2108	55.3 25+)	11348

## Report of Tests Made Wednesday, April 10, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr. Order Nos.
Ptrs. Naptha	838	521	55.8 25+)	7626
Ptrs. Naptha	838	560	55.6 25+)	OK by 7626
Ptrs. Naptha	838	632	55.7 25+)	Mr. GLP 7626
Ptrs. Naptha	838	2106	55.5 25+)	7626
Ptrs. Naptha	838	2120	55.3 25+	7626

## Report of Tests Made Thursday, April 11th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Order Nos.
Gasoline	805	58.6	25+	
Gasoline	857	73.5	24+	
Crude Naphtha	829	51.2		

1414 GULF REFINING COMPANY, A CORPORATION, *vs.*

Casoline	805 & 857	Car 1723	60.5	25+	44510
Gasoline	805 & 857	Car 1429	60.0	25+	45693
Gasoline	805 & 857	Car 1712	60.4	25+	45859
Gasoline	805 & 857	Car 1829	60.8	25+	46060
Gasoline	805 & 857	Car 1341	60.0	25+	45884
Gasoline	805 & 857	Car 1953	60.0	25+	45947
Painters Naptha	838	2187	55.7	25+	11348
Painters Naptha	838	2179	55.3	25+	11348
Painters Naptha	838	2183	55.7	25+	11348
Painters Naptha	838	2159	55.5	25+	11348
Unrefined Naptha		406	76.1	25+	
Unrefined Naptha		554	74.7	25+	
Unrefined Naptha		503	75.5	25+	
Unrefined Naptha		436	75.7	25+	
Unrefined Naptha		401	75.5	25+	

Report of Tests Made Friday, April 12th, 1918.

Kind of Oil.	Tank.	Grav.	Color.	Dr.	Order Nos.
Ptrs. Naptha	838	436	55.2	25+)	7626
Ptrs. Naptha	838	2188	55.2	25+)	OK by 11348
Ptrs. Naptha	838	554	54.8	25+)	Mr. EBP 7626
Ptrs. Naptha	838	503	55.1	25+)	7626
Ptrs. Naptha	838	2190	55.4	25+)	11348
Ptrs. Naptha	838	2198	56.0	25+)	OK by 11348
				) Mr. GLP	
Ptrs. Naptha	838	2167	54.8	25+)	OK by 11348
Ptrs. Naptha	838	2151	55.0	25+)	Mr. EBP 11348

Report of Tests Made Monday, April 15th, 1918.

Kind of Oil.	Tank.	Grav.	Color.	Dr.	Order Nos.
Painters Naptha	838	2158	54.9	25+	7626
Painters Naptha	838	2161	54.7	25+	7626
Painters Naptha	838	2155	55.2	25+	7626
Painters Naptha	838	2154	54.7	25+	7626

Report of Tests Made Monday, April 22, 1918.

Kind of Oil.	Tank.	Grav.	Color.	Dr.	Order Nos.
Painters Naptha		2121	54.3	25+	11348
Painters Naptha		2102	54.3	25+	7626
Painters Naptha		2173	54.6	25+	11348
Painters Naptha		2166	54.4	25+	7626

## Report of Tests Made Monday, April 22, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Naptha	2184	54.5	25+		7626
Painters Naptha	2194	54.5	25+		7626
Painters Naptha	2197	54.2	25+		7626
Painters Naptha	2153	54.4	25+		11348
Painters Naptha	2124	54.5	25+		11348
Painters Naptha	2155	54.4	25+		7626
Painters Naptha	2114	54.8	25+		11348

## Report of Tests Made Tuesday, April 23, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	2150	51.4	23+)		11348
Ptrs. Naptha	2177	50.9	23+)		11348
Ptrs. Naptha	2168	50.6	23+)		11348
Ptrs. Naptha	2112	50.6	23+)	Ok'ed	11348
Ptrs. Naptha	2182	50.9	23+)	by GLP	11348
Ptrs. Naptha	2176	50.6	23+)		7626
Ptrs. Naptha	2104	50.6	23+)		7626
Ptrs. Naptha	2162	50.5	23+)	Oked by	7626
Ptrs. Naptha	2107	50.6	23+)	GLP	7626

## Report of Tests Made Friday, April 26, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	62.2	25+		
Gasoline	857	73.8	23+		
Gasoline	838	69.5	23+		
Crude Naphtha	829	56.3			
Unrefined Naph. Car	1277	81.5	20+		
Unrefined Naph. Car	1431	81.6	18+		

## Report of Tests Made Saturday, April 27th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	73.5	23+		
Crude Naphtha	829	54.2			
Unrefined Naph. Car	1979	82.7	19+		
Unrefined Naph. Car	1607	81.8	20+		

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Report of Tests Made Tuesday May 7th, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	823	2122	50.6	24+		7626
Ptrs. Naptha	923	2163	50.6	+24		7626
Ptrs. Naptha	923	2185	50.5	+24		7626

Report of Tests Made Wednesday, May 8th, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Gasoline	805		58.0	25+		
Gasoline	838		71.7	23+		
Gasoline	857		74.1	23+		
Crude Naptha	829		56.3			
Unrefined Naph. Car	1430		74.1	22+		Keifer
Unrefined Naph. Car	1250		73.5	23+		Keifer
Unrefined Naph. Car	2197		73.7	25+		Keifer
Unrefined Naph. Car	2123		72.4	25+		Keifer
Ptrs. Naphtha	923	1943	50.6	25+		7626
Ptrs. Naphtha	923	1264	50.6	+25		7626
Ptrs. Naphtha	923	957	50.7	25+		7626
Ptrs. Naphtha	923	2162	51.0	+25		7626
Ptrs. Naphtha	923	7220	50.6	25+		11348
Ptrs. Naphtha	923	976	50.6	25+		7626
Ptrs. Naphtha	923	1774	50.6	25+		7626
Ptrs. Naphtha	923	1949	50.7	+25		7626
Ptrs. Naphtha	923	2104	50.6	25+		7626
Ptrs. Naphtha	923	1947	50.6	25+		11348
Ptrs. Naphtha	923	2184	51.3	25+		7626
Ptrs. Naphtha	923	1987	54.0	+25		11348
Ptrs. Naphtha	923	1602	54.0	+25		11348
Ptrs. Naphtha	923	1944	53.9	+25		11348
Ptrs. Naphtha	923	2189	52.5	+25		7626
Ptrs. Naphtha	923	2103	53.7	+25		7626
Ptrs. Naphtha	923	1837	50.7	+25		7626
Ptrs. Naphtha	923	2174	53.9	25+		7626
Ptrs. Naphtha	923	2165	52.5	+25		7626
Ptrs. Naphtha	923	2194	51.7	25+		7626
Unrefined Naphtha		1854	72.9	23+		Keifer
Unrefined Naphtha		1816	73.5	25+		Keifer

Report of Tests Made Thursday, May 9th, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Gasoline	805		59.2	25+		



## UNITED STATES OF AMERICA.

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Gasoline	838	71.6	+24		
Gasoline	857	74.5	23+		
Crude Naphtha	829	53.0			
Car Ptrs. Naph.	923 632	53.6	25+		7626
Car Ptrs. Naph.	923 503	54.0	25+		7626
Car Ptrs. Naph.	923 436	53.8	+25		7626
Car Ptrs. Naph.	923 401	54.0	+25		7626
Unrefined Naph. Car	1712	82.0	22+	Jenks	
Unrefined Naph. Car	1335	82.1	20+	Jenks	
Unrefined Naph. Car	2166	73.4	25+	Keifer	

## Report of Tests Made Wednesday, May 15th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	923 2153	50.8	25+)		7626
Ptrs. Naptha	923 2105	50.9	25+)		11348
Ptrs. Naptha	923 GP 560	51.0	25+)		7626
Ptrs. Naptha	923 2168	51.0	25+)	OK by	11348
Ptrs. Naptha	923 2112	50.9	25+)	Mr.	11348
Ptrs. Naptha	923 2179	50.9	25+)	GLP	7626
Ptrs. Naptha	923 2176	50.9	25+)		11348
Ptrs. Naptha	923 2183	50.9	25+)		7626

## Report of Tests Made Sunday, May 19, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	73.9	+24		
Unrefined Naph.	Car 924	79.9	+21		Jenks
Unrefined Naph.	Car 2178	79.8	+18		Jenks

## Report of Tests Made Monday, May 20th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	923 2124	51.1	25+)		7626
Ptrs. Naptha	923 2161	51.0	25+)		11348
Ptrs. Naptha	923 1810	50.8	25+)		11348
Ptrs. Naptha	923 2191	51.4	25+)	OK by	7626
Ptrs. Naptha	923 1606	50.8	25+)	Mr.	11348
Ptrs. Naptha	923 2158	51.0	25+)	GLP	11348
Ptrs. Naptha	923 2150	51.2	25+)		7626
Ptrs. Naptha	923 2155	51.0	25+)		7626
Ptrs. Naptha	923 2181	51.1	25+)		7626

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Report of Tests Made Tuesday, May 21st, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	923	2194	51.3	25+)		7626
Ptrs. Naptha	923	2103	51.3	25+)	OK by	7626
Ptrs. Naptha	923	2165	51.4	25+)	Mr.	7626
Ptrs. Naptha	923	2184	51.2	25+)	EBP	11348

Report of Tests Made Wednesday, May 22nd, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Gasoline	857		73.6	24 +		
Unrefined Naph. Car		2101	80.9	+19		Jenks
Unrefined Naph. Car		2120	80.8	20 +		Jenks

Report of Tests Made Monday, May 27, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	923	2189	50.3	25 +		7626
Ptrs. Naptha	923	2146	50.8	25 +		11348
Ptrs. Naptha	923	2149	50.9	25 +		7626
Ptrs. Naptha	923	2121	50.6	25 +		11348
Ptrs. Naptha	923	2108	51.0	25 +		11348
Ptrs. Naptha	923	2174	50.4	25 +		7626
Ptrs. Naptha	923	2188	50.3	25 +		11348
Ptrs. Naptha	923	2111	50.3	25 +		11348
Ptrs. Naptha	923	1953	50.3	25 +		7626
Ptrs. Naptha	923	1460	50.3	25 +		7626
Ptrs. Naptha	923	1837	50.3	25 +		7626
Ptrs. Naptha	923	2167	50.3	25 +		7626
Ptrs. Naptha	923	1930	50.3	25 +		7626

Report of Tests Made Tuesday, June 4, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	923	2176	50.6	25 +		7626
Ptrs. Naptha	923	2168	50.5	25 +		7626
Ptrs. Naptha	923	2112	50.5	25 +		7626
Ptrs. Naptha	923	2186	50.6	25 +		7626
Ptrs. Naptha	923	2155	50.5	25 +		7626
Ptrs. Naptha	923	2169	50.6	25 +		7626
Ptrs. Naptha	923	2100	50.5	25 +		7626
Ptrs. Naptha	923	2105	50.5	25 +		7626

## Report of Tests Made Wednesday, June 5th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	58.6	25+		117-407
Gasoline	857	62.6	+25		121-415
Gasoline	838	61.2	25+		115-417
Crude Naph.	829	MT			
Unrefined Naph.	Car 2119	79.5	18+	Jenks	

## Report of Tests Made Thursday, June 6, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	59.3	25+	NG	104-420
Gasoline	857	62.4	+25		104-421
Crude Naphtha	829	MT			
Unrefined Naph.	Car 2171	79.7	18+	Jenks	

## Report of Tests Made Monday, June 10, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Ptrs. Naptha	923 1902	50.6	25+)		7626
Ptrs. Naptha	923 2194	50.4	25+)	OK by	7626
Ptrs. Naptha	923 2164	50.4	+25 )	Mr.	7626
Ptrs. Naptha	923 2103	50.6	+25 )	EBP	7626
Ptrs. Naptha	923 2148	50.4	+25 )		7626
Ptrs. Naptha	923 2165	50.3	24+ F)		7626
Ptrs. Naptha	923 2116	50.6	24+ F)		7626
Ptrs. Naptha	923 1930	50.5	24+ F)		7626
Ptrs. Naptha	923 1395	50.3	24+ F)		11348
Ptrs. Naptha	923 2167	52.0	24+ F)	E.B.P.	11348
Ptrs. Naptha	923 2170	50.4	24+ F)		11348
Ptrs. Naptha	923 2189	52.0	24+ F)		11348
Ptrs. Naptha	923 1956	51.7	24+ F)		11348
Ptrs. Naptha	923 2174	51.9	24+ F)		11348

## Report of Tests Made Thursday, June 13, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	60.9	23+ F	NG	102-390
Gasoline	838	58.1	25+	NG	150-396
Gasoline	857	59.0	+25	NG	130-396
Crude Naphtha	829	52.1			
Unrefined Naph.	Car 2151	87.5	23+		Jenks
Unrefined Naph.	Car 2150	76.6	18+		Jenks

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Report of Tests Made Monday, June 17, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Painters Naph.	923	1305	50.7	25+		7626
Painters Naph.	923	2122	50.4	25+		7626
Painters Naph.	923	2198	50.5	25+		7626
Painters Naph.	923	1321	50.5	25+		7626
Painters Naph.	923	2147	50.6	25+		7626
Painters Naph.	923	4960	50.5	25+		7626
Painters Naph.	923	2192	50.6	25+		11348
Painters Naph.	923	1987	50.4	25+		11348
Painters Naph.	923	1947	50.6	25+		11348
Painters Naph.	923	2182	50.4	25+		11348
Painters Naph.	923	2178	50.7	25+		11348

Report of Tests Made Monday, June 24, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2161	50.8	25+		7626
Cracked Gasoline	923	2111	50.5	25+		7626
Cracked Gasoline	923	1432	50.6	25+		11348
Cracked Gasoline	923	2165	50.5	25+		7626
Cracked Gasoline	923	2116	50.8	25+		11348
Cracked Gasoline	923	2164	50.5	25+		11348
Cracked Gasoline	923	1930	50.6	25+		7626
Cracked Gasoline	923	2114	50.5	25+		7626
Cracked Gasoline	923	1902	50.6	25+		7626
Cracked Gasoline	923	2194	50.6	25+		7626
Cracked Gasoline	923	1233	50.5	25+		11348
Cracked Gasoline	923	993	50.5	25+		11348
Cracked Gasoline	923	2103	50.9	25+		7626

Report of Tests Made Tuesday, June 25, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Gasoline	805		59.1	+25		135-390
Crude Naphtha	829		52.1			
Unrefined Naph.	Car	1228	67.9	23+	Drumright	
Unrefined Naph.	Car	1744	68.3	22+	Drumright	
Unrefined Naph.	Car	1726	67.6	23+	Drumright	
Unrefined Naph.	Car	2199	67.7	23+	Drumright	
Unrefined Naph.	Car	1708	67.8	23+	Drumright	

## Report of Tests Made Friday, June 28, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	61.1	23+		120-388
Crude Naphtha	829	53.3			
Unrefined Naph.	Car	764 79.0	20+	Jenks	

## Report of Tests Made Monday, July 15, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	1327 51.0	25+		7626
Cracked Gasoline	923	1956 51.0	25+		7626
	923	1172 50.5	25+		7626
Cracked Gasoline	923	1245 50.4	25+		7626
Cracked Gasoline	923	2117 50.3	25+		7626
Cracked Gasoline	923	984 50.4	25+		7626
Cracked Gasoline	923	2179 50.5	25+		7626
Cracked Gasoline	923	1607 50.5	25+		7626
Cracked Gasoline	923	1796 50.4	25+		11348
Cracked Gasoline	923	1165 50.3	25+		11348
Cracked Gasoline	923	1606 50.5	25+		11348

## Report of Tests Made Friday, July 26, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	60.7	24+	NG	
Crude Naphtha	829	53.1			
Unrefined Naph.	Car	1116 67.3	20+	Drumright	

## Report of Tests Made Tuesday, July 30, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Painters Naph.	agt.	1870 54.9	+24		7626
Painters Naph.	1-3	1381 55.0	23+		7626
Painters Naph.	1-3	2181 53.7	23+		7626
Painters Naph.	1-3	2006 53.1	23+		11348
Painters Naph.	1-3	1467 54.3	+23		11348
Painters Naph.	1-3	1333 53.5	+23		11348
Painters Naph.	1-3	1163 55.1	23+		11348
Painters Naph.	1-3	1331 53.6	+23		11348
Painters Naph.	1-3	2104 55.0	25+		7626
Painters Naph.	1-3	1999 55.1	25+		7626
Painters Naph.	1-3	1729 55.1	24+		7626
Painters Naph.	1-3	2011 53.9	23+		11348

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Painters Naph.	1-3	1408	54.9	25+	11348
Painters Naph.	1-3	1338	55.1	+24	7626
Painters Naph.	1-3	2012	55.1	+24	7626

Report of Tests Made Monday, August 5, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Painters Naph.	agt. 6	2161	54.4	25+		7626
Painters Naph.	agt.	1606	54.4	25+		7626
Painters Naph.	agt.	2175	54.3	25+		7626
Painters Naph.	agt.	1947	54.3	25+		11348
Painters Naph.	agt.	1444	54.4	25+		11348
Painters Naph.	agt.	1865	54.3	25+		7626
Painters Naph.	agt.	2101	54.3	25+		7626
Painters Naph.	agt.	427	54.2	25+		7626
Painters Naph.	agt.	958	54.3	25+		11348
Painters Naph.	agt.	1327	54.3	25+		11348
Painters Naph.	agt.	1397	54.3	25+		7626
Painters Naph.	agt.	1987	54.1	25+		7626

Report of Tests Made Thursday, August 15, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Painters Naph.		1201	54.5	24+ F)		7626
Painters Naph.		1100	54.4	+24 F)		7626
Painters Naph.		2197	53.8	24+ F) OK by		7626
Painters Naph.		1160	54.5	24+ F) Mr.		11348
Painters Naph.		1278	54.5	24+ F) E.B.P.		7626
Painters Naph.		1470	54.5	24+ F)		7626
Painters Naph.		2118	54.5	24+ F)		7626

Report of Tests Made Saturday, August 23, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Painters Naph.	Agt. #4	2184	52.1	23+		7626
Painters Naph.	Agt.	2167	52.1	23+		7626
Painters Naph.	Agt.	2180	52.0	23+		7626
Painters Naph.	Agt.	1265	52.2	23+		7626
Painters Naph.	Agt.	2147	52.3	23+		7626
Painters Naph.	Agt.	2155	52.1	23+		7626
Painters Naph.	Agt.	2191	52.2	23+		7626
Painters Naph.	Agt.	829	52.4	23+		7626
Painters Naph.	Agt.	1974	52.4	23+		7626

## Report of Tests Made Tuesday, August 27, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Cracked Gas	923	1889	51.0	25+		11348
Cracked Gas	923	2170	51.2	25+		11348
Cracked Gas	923	1611	51.6	25+		11348
Cracked Gas	923	1967	51.6	25+		11348
Cracked Gas	923	1100	51.4	25+		11348
Cracked Gas	923	2149	50.8	25+		11348
Cracked Gas	923	1225	51.8	25+		11348
Cracked Gas	923	2113	51.0	25+		11348
Cracked Gas	923	952	51.0	25+		11348
Cracked Gas	923	1470	51.4	25+		11348
Cracked Gas	923	2197	51.4	25+		11348
Cracked Gas	923	1455	50.8	25+		11348
Cracked Gas	923	1763	51.0	25+		11348
Cracked Gas	923	2103	50.5	25+		11348
Cracked Gas	923	1049	50.7	25+		11348
Cracked Gas	923	1728	50.6	25+		11348

## Report of Tests Made Wednesday, August 28, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2182	51.2	25+		7626
Cracked Gasoline	923	1783	51.5	25+		7626
Cracked Gasoline	923	2008	51.2	25+		7626
Cracked Gasoline	923	1078	50.9	25+		7626
Cracked Gasoline	923	2166	51.0	25+		7626
Cracked Gasoline	923	1837	51.2	25+		7626
Cracked Gasoline	923	1469	50.9	25+		7626
Cracked Gasoline	923	1233	51.2	25+		7626
Cracked Gasoline	923	2025	50.9	25+		7626
Cracked Gasoline	923	1461	51.0	25+		7626
Cracked Gasoline	923	1799	51.2	25+		7626
Cracked Gasoline	923	2158	51.2	25+		7626
Cracked Gasoline	923	1142	51.2	25+		7626
Cracked Gasoline	923	816	51.2	25+		7626
Cracked Gasoline	923	1450	51.6	25+		7626
Cracked Gasoline	923	1467	51.4	25+		7626
Cracked Gasoline	923	935	51.4	25+		7626
Cracked Gasoline	923	932	51.2	25+		7626
Cracked Gasoline	923	984	51.2	25+		7626
Cracked Gasoline	923	1462	51.1	25+		7626
Cracked Gasoline	923	1383	51.2	25+		11348
Cracked Gasoline	923	976	51.2	25+		11348
Cracked Gasoline	923	1991	51.2	25+		11348



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Report of Tests Made Sunday, September 1, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	930	51.6	25+		7626
Cracked Gasoline	923	1237	51.4	25+		7626
Cracked Gasoline	923	1824	51.3	25+		7626
Cracked Gasoline	923	1707	51.5	25+		7626
Cracked Gasoline	923	986	51.3	25+		7626
Cracked Gasoline	923	970	51.3	25+		7626
Cracked Gasoline	923	1237	51.5	25+		7626
Cracked Gasoline	923	1238	51.3	25+		7626
Cracked Gasoline	923	2104	51.0	25+		7626
Cracked Gasoline	923	1128	51.3	25+		7626

Report of Tests Made Sunday, Tuesday, September 3, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2164	51.2	25+		11348
Cracked Gasoline	923	1404	51.1	25+		11348
Cracked Gasoline	923	1962	51.4	25+		11348
Cracked Gasoline	923	1395	51.1	25+		11348
Cracked Gasoline	923	2112	51.0	25+		11348
Cracked Gasoline	923	1244	51.0	25+		11348
Cracked Gasoline	923	1267	51.0	25+		11348
Cracked Gasoline	923	1214	51.1	25+		11348

Report of Tests Made Thursday, September 5, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	1312	51.4	25+		11348
Cracked Gasoline	923	251	51.5	25+		11348
Cracked Gasoline	923	2027	51.5	25+		11348
Cracked Gasoline	923	2102	51.4	25+		11348
Cracked Gasoline	923	1011	50.9	25+		11348
Cracked Gasoline	923	1768	51.1	25+		11348
Cracked Gasoline	923	2193	51.0	25+		11348
Cracked Gasoline	923	1452	51.5	25+		11348
Cracked Gasoline	923	1319	50.8	25+		7626
Cracked Gasoline	923	1861	50.9	25+		7626
Cracked Gasoline	923	1996	50.8	25+		7626
Cracked Gasoline	923	1956	50.8	25+		7626
Cracked Gasoline	923	1401	50.7	25+		7626
Cracked Gasoline	923	745	50.8	25+		7626
Cracked Gasoline	923	1852	50.8	25+		7626
Cracked Gasoline	923	2011	50.9	25+		7626

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Cracked Gasoline	923	1072	50.8	25+	7626
Cracked Gasoline	923	972	50.7	25+	7626

## Report of Tests Made Thursday, September 12, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Gasoline	838		58.1	25+		
Gasoline	838	1432	58.0	25+		48961
Gasoline	838	1792	57.7	25+		48943
Gasoline	838	2116	57.7	25+		48945
Unrefined Naph. (top	2119		67.8		Drumright	
Unrefined Naph. (bot.	2119		67.8			
Unrefined Naph. (top	1728		67.9		Drumright	
Unrefined Naph. (bot.	1728		67.9			
Unrefined Naph. (top	1383		67.5		Drumright	
Unrefined Naph. (bot.	1383		67.5			

## Report of Tests Made Saturday, September 14th, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Unrefined Naph. Top	1611		67.3		Drumright	
Unrefined Naph. Bot	1611		66.3			
Unrefined Naph. Top	2160		66.0		Keifer	
Unrefined Naph. Bot	2160		67.2			
Unrefined Naph. Top	1470		66.7		Drumright	
Unrefined Naph. Bot	1470		66.9			
Unrefined Naph. Top	2170		67.4		Drumright	
Unrefined Naph. Bot	2170		66.1			
Unrefined Naph. Top	2197		66.9		Drumright	
Unrefined Naph. Bot	2197		67.0			
Unrefined Naph. Top	1455		66.6		Drumright	
Unrefined Naph. Bot	1455		67.0			
Unrefined Naph. Top	2113		67.3		Drumright	
Unrefined Naph. Bot	2113		67.3			
Unrefined Naph. Top	1225		66.5		Drumright	
Unrefined Naph. Bot	1225		67.1			
Gasoline	838		57.8	25+		

## Report of Tests Made Sunday, September 15, 1918.

Kind of Oil.	Tank.		Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	1824	51.1	25+		7626

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Cracked Gasoline	923	1707	51.4	25+	7626
Cracked Gasoline	923	2163	52.4	23+	7626
Cracked Gasoline	923	1228	50.9	25+	11348
Cracked Gasoline	923	1613	50.9	25+	11348
Cracked Gasoline	923	2174	51.0	25+	11348
Cracked Gasoline	923	1237	51.3	25+	7626
Cracked Gasoline	923	2115	51.6	25+	7626
Cracked Gasoline	923	1142	51.8	23+	7626
Cracked Gasoline	923	1953	50.9	25+	11348
Cracked Gasoline	923	1961	51.0	25+	7626
Cracked Gasoline	923	1774	51.0	25+	7626
Cracked Gasoline	923	1792	50.9	25+	11348
Cracked Gasoline	923	1078	51.0	25+	11348
Cracked Gasoline	923	1865	51.0	25+	11348
Cracked Gasoline	923	1447	51.0	25+	11348
Cracked Gasoline	923	1612	51.0	25+	7626

Report of Tests Made Saturday, September 21, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	57.9	25+		
Unrefined Naph.	Cars 1211	81.8	Jenks		
Unrefined Naph.	Cars 1446	81.7	Jenks		

Report of Tests Made Monday, September 30th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	59.6	25+		
Crude Naphtha	829	54.1			
Unrefined Naph.	251	66.0		Drumright	
Cracked Gasoline	923 2115	50.8			7626
Cracked Gasoline	923 1237	50.6			7626
Cracked Gasoline	923 2011	51.1			7626
Cracked Gasoline	923 2163	50.9			7626
Cracked Gasoline	923 1470	51.0			7626
Cracked Gasoline	923 1612	50.7			7626
Cracked Gasoline	923 1991	51.3			7626
Cracked Gasoline	923 1443	51.3			11348
Cracked Gasoline	923 1858	50.8			7626
Cracked Gasoline	923 1392	51.0			7626
Cracked Gasoline	923 1072	51.5			11348
Cracked Gasoline	923 1273	51.5			11348
Cracked Gasoline	923 1730	51.1			7626

## Report of Tests Made Monday, October 7, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	903	1852	51.0	23+	11348
Cracked Gasoline	903	2199	51.0	23+	12836
Cracked Gasoline	903	923	51.5	23+	7626
Cracked Gasoline	903	2199	51.0	23+	7626
Cracked Gasoline	903	2186	51.4	23+	7626
Cracked Gasoline	903	1975	51.0	23+	11348
Cracked Gasoline	903	1450	51.1	23+	11348
Cracked Gasoline	903	1783	51.1	23+	7626
Cracked Gasoline	903	2110	51.0	25+	11348
Cracked Gasoline	903	1462	51.1	23+	7626
Cracked Gasoline	903	1934	51.0	23+	11348
Cracked Gasoline	923	1934	51.0	23+	11348
Cracked Gasoline	923	1998	51.0	23+	7626
Cracked Gasoline	923	1976	51.0	23+	11348
Cracked Gasoline	923	1233	51.6	23+	7626
Cracked Gasoline	923	2101	51.1	23+	7626
Cracked Gasoline	923	2171	51.0	23+	7626
Cracked Gasoline	923	973	51.0	23+	11348
Cracked Gasoline	923	2152	51.1	23+	12836
Cracked Gasoline	923	1983	51.5	23+	7626
Cracked Gasoline	923	2008	51.1	23+	11348

## Report of Tests Made Friday, October 11th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	62.0	+25		
Crude Naphtha	829	54.0			
Unrefined Naph.	Car	1967	81.2	Jenks	
Unrefined Naph.	Car	1381	80.4	Jenks	

## Report of Tests Made Sunday, October 13, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2116	50.7	23+	7626
Cracked Gasoline	923	1228	51.3	23+	7626
Cracked Gasoline	923	2184	51.3	23+	7626
Cracked Gasoline	923	1749	51.4	23+	7626
Cracked Gasoline	923	2198	51.4	23+	7626
Cracked Gasoline	923	2174	51.7	23+	7626
Cracked Gasoline	923	2115	51.6	23+	11348
Cracked Gasoline	923	2148	51.3	23+	7626
Cracked Gasoline	923	1730	51.6	23+	7626

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Cracked Gasoline	923	2182	51.4	23+	7626
Cracked Gasoline	923	2121	51.3	23+	7626

Report of Tests Made Monday, October 14, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	1915	51.3	23+	11348
Cracked Gasoline	923	1866	51.4	23+	11348
Cracked Gasoline	923	1315	51.3	23+	11348
Cracked Gasoline	923	2169	51.2	23+	11348
Cracked Gasoline	923	1612	51.4	23+	11348
Cracked Gasoline	923	2154	51.3	23+	11348

Report of Tests Made Tuesday, October 15, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	55.4	25+		
Crude Naphtha	829	53.7			
Unrefined Naph.	Car	745	64.6	Drumright	
Unrefined Naph.	Car	2112	64.8	Drumright	
Cracked Gasoline	923	1762	51.4	23+	11348

Report of Tests Made Sunday, October 20, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	2179	51.3	25+		11348
Cracked Gasoline	1998	51.3	25+		11348
Cracked Gasoline	2171	51.6	24+		11348
Cracked Gasoline	1983	51.3	24+		11348
Cracked Gasoline	2186	51.5	24+		11348
Cracked Gasoline	2101	51.3	24+		11348
Cracked Gasoline	2119	51.5	24+		11348
Cracked Gasoline	1707	51.5	24+		11348
Cracked Gasoline	1823	51.6	25+		7626
Cracked Gasoline	1815	51.4	25+		7626
Cracked Gasoline	1982	51.7	25+		7626
Cracked Gasoline	2185	51.3	25+		7626
Cracked Gasoline	2123	51.4	25+		7626
Cracked Gasoline	2146	51.6	25+		7626
Cracked Gasoline	1930	51.8	24+		7626
Cracked Gasoline	1956	51.3	23+		7626
Cracked Gasoline	1857	51.8	25+		7626
Cracked Gasoline	1955	51.8	25+		7626

## Report of Tests Made Friday, October 25, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	2149	51.9	+23		7626
Cracked Gasoline	2222	51.4	+23		7626
Cracked Gasoline	2158	51.3	+23		7626
Cracked Gasoline	2150	51.8	+23		7626
Cracked Gasoline	2209	51.9	+23		7626
Cracked Gasoline	2224	51.3	+23		7626
Cracked Gasoline	2223	51.4	23+		7626
Cracked Gasoline	2117	51.9	+23		7626
Cracked Gasoline	2216	51.3	+23		7626

## Report of Tests Made Tuesday, October 29, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gas.	923 2241	51.3	23+	Filt.	7626
Cracked Gas.	923 2220	51.5	23+	Filt.	11348
Cracked Gas.	923 2219	52.2	23+	Filt.	7626
Cracked Gas.	923 2218	52.2	23+	Filt.	7626
Cracked Gas.	923 2243	51.4	23+	Filt.	7626
Cracked Gas.	923 2118	51.4	23+	Filt.	7626
Cracked Gas.	923 2244	51.4	23+	Filt.	7626
Cracked Gas.	923 2245	51.4	23+	Filt.	7626
Cracked Gas.	923 2191	51.4	23+	Filt.	7626
Cracked Gas.	923 2181	51.4	23+	Filt.	7626
Cracked Gas.	923 2242	51.4	23+	Filt.	7626
Cracked Gas.	923 2221	51.5	23+	Filt.	11348
Cracked Gas.	923 2210	51.3	23+	Filt.	11348
Cracked Gas.	923 2211	51.4	23+	Filt.	11348
Cracked Gas.	923 2229	51.3	23+	Filt.	11348
Cracked Gas.	923 2206	51.3	23+	Filt.	11348
Cracked Gas.	923 2208	51.4	23+	Filt.	11348
Cracked Gas.	923 2205	51.5	23+	Filt.	11348

## Report of Tests Made, Monday, Nov. 4, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923 1726	52.0	23+		7626
Cracked Gasoline	923 1758	52.1	23+		7626
Cracked Gasoline	923 2165	51.9	23+		11348
Cracked Gasoline	923 1852	51.9	23+		11348
Cracked Gasoline	923 2212	51.7	23+		7626
Cracked Gasoline	923 2169	51.6	23+		11348
Cracked Gasoline	923 1861	51.6	23+		11348

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Cracked Gasoline	923	1768	51.5	23+	7626
Cracked Gasoline	923	2215	51.7	23+	11348
Cracked Gasoline	923	2226	52.0	23+	7626
Cracked Gasoline	923	2197	51.8	23+	11348
Cracked Gasoline	923	2202	52.1	23+	7626
Cracked Gasoline	923	2159	51.7	23+	11348
Cracked Gasoline	923	1823	52.0	23+	11348
Cracked Gasoline	923	1793	51.9	23+	7626
Cracked Gasoline	923	1827	51.9	23+	7626
Cracked Gasoline	923	2213	52.2	23+	7626
Cracked Gasoline	923	2214	52.4	23+	7626

Report of Tests Made Tuesday, November 12th, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	58.2	21+	NG	
Gasoline	857	58.7	25+	NG	
Unrefined Naphtha	1707	64.3			Drumright
Unrefined Naphtha	2110	83.4			Jenks
Unrefined Naphtha	2249	83.5			Jenks

Report of Tests Made Thursday, November 14, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2224	52.1	23+	7626
Cracked Gasoline	923	2119	52.0	23+	11348
Cracked Gasoline	923	2157	52.1	23+	7626
Cracked Gasoline	923	2150	52.0	23+	11348
Cracked Gasoline	923	1998	52.0	23+	11348
Cracked Gasoline	923	2209	52.0	23+	7626
Cracked Gasoline	923	1961	52.1	23+	7626
Cracked Gasoline	923	1987	52.3	23+	7626
Cracked Gasoline	923	1707	52.1	23+	11348
Cracked Gasoline	923	2158	52.0	23+	11348
Cracked Gasoline	923	2113	52.0	23+	7626
Cracked Gasoline	923	2179	52.0	23+	11348
Cracked Gasoline	923	2216	52.0	23+	7626
Cracked Gasoline	923	2104	52.1	23+	11348
Cracked Gasoline	923	2217	52.7	23+	7626

Report of Tests Made Monday, November 18, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2193	52.0		7626



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Cracked Gasoline	923	2021	52.0	7626
Cracked Gasoline	923	2220	52.0	7626
Cracked Gasoline	923	2247	52.0	7626
Cracked Gasoline	923	2011	52.0	7626
Cracked Gasoline	923	2244	52.0	11348
Cracked Gasoline	923	1726	52.0	11348
Cracked Gasoline	923	2175	52.0	7626
Cracked Gasoline	923	2006	52.0	11348
Cracked Gasoline	923	1713	52.0	11348
Cracked Gasoline	923	2211	52.0	11348
Cracked Gasoline	923	2248	52.0	7626
Cracked Gasoline	923	1988	52.0	11348
Cracked Gasoline	923	1944	52.0	7626
Cracked Gasoline	923	2210	52.0	7626
Cracked Gasoline	923	1947	52.0	11348

## Report of Tests Made Tuesday, November 26, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2224	52.0	23+	7626
Cracked Gasoline	923	2215	52.5	23+	7626
Cracked Gasoline	923	2198	52.4	23+	7626
Cracked Gasoline	923	2105	52.1	23+	7626
Cracked Gasoline	923	1987	51.9	23+	7626
Cracked Gasoline	923	1718	52.0	23+	11348
Cracked Gasoline	923	1961	52.0	23+	7626
Cracked Gasoline	923	1837	52.0	23+	11348
Cracked Gasoline	923	2103	52.0	23+	7626
Cracked Gasoline	923	2222	52.0	23+	7626
Cracked Gasoline	923	1963	52.0	23+	11348
Cracked Gasoline	923	2108	52.0	23+	7626
Cracked Gasoline	923	2112	52.0	23+	11348
Cracked Gasoline	923	2209	52.0	23+	7626

## Report of Tests Made Wednesday, November 27, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2249	52.2	+24	11348
Cracked Gasoline	923	2157	51.9	+24	11348
Cracked Gasoline	923	1819	52.2	+24	11348
Cracked Gasoline	923	2186	52.2	+24	11348
Cracked Gasoline	923	2187	52.3	+24	11348

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Report of Tests Made December 2, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	1948	52.1	23+	11348
Cracked Gasoline	923	2248	52.1	23+	7626
Cracked Gasoline	923	2114	52.1	23+	7626
Cracked Gasoline	923	2247	52.0	23+	7626
Cracked Gasoline	923	2220	52.0	23+	7626
Cracked Gasoline	923	2196	52.0	23+	7626
Cracked Gasoline	923	2115	52.1	23+	7626
Cracked Gasoline	923	2178	52.1	23+	7626
Cracked Gasoline	923	1943	52.0	23+	11348
Cracked Gasoline	923	1753	52.1	23+	7626
Cracked Gasoline	923	2110	52.0	23+	11348
Cracked Gasoline	923	2193	52.1	23+	7626
Cracked Gasoline	923	2011	52.0	23+	7626
Cracked Gasoline	923	2185	52.4	23+	11348
Cracked Gasoline	923	1797	52.5	23+	11348
Cracked Gasoline	923	2102	52.0	23+	11348
Cracked Gasoline	923	1991	52.1	23+	11348

Report of Tests Made Thursday, December 12, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	58.0	25+		
Crude Naphtha	829	57.0			
Unrefined Naph.	2173	67.6	Drumright		
Unrefined Naph.	2183	67.3	Drumright		

Report of Tests Made Monday, December 16, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	63.1	25+		
Gasoline	857	57.9	25+		

Report of Tests Made Tuesday December 17, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2190	52.3	25+	11348
Cracked Gasoline	923	1889	52.3	25+	11348
Cracked Gasoline	923	2112	52.4	25+	11348
Cracked Gasoline	923	1968	52.4	25+	11348
Cracked Gasoline	923	2116	52.3	25+	11348

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Cracked Gasoline	923	2166	52.8	25+	11348
Cracked Gasoline	923	2133	52.3	25+	11348
Cracked Gasoline	923	2146	52.5	25+	11348

## Report of Tests Made Wednesday, December 18, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	58.7	25+		
Crude Naphtha	829	54.4			
Unrefined Naphtha	2157	68.4		Drumright	
Unrefined Naphtha	1976	68.0		Drumright	

## Report of Tests Made Friday, December 20, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	59.1	25+		
Crude Naph.	829	52.4			
Unrefined Naph.	2194	69.2		Drumright	
Gasoline	857	2121	58.9	25+ over at 112°	50551
Gasoline	2117	58.9	221°	32.5%	50554
Gasoline	2209	58.9	275°	61.0%	50553
Gasoline	1852	58.7	356°	89.0%	50562
Gasoline	1976	58.8	Dry	408%	50560
Gasoline	2185	58.7	Rec	95.5%	50549

## Report of Tests Made Monday, December 23, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cracked Gasoline	923	2163	52.5	23+	11348
Cracked Gasoline	923	2204	52.6	23+	11348
Cracked Gasoline	923	2106	52.4	23+	11348
Cracked Gasoline	923	1861		23+	7626
Cracked Gasoline	923	2246		23+	7626
Hy. Ptrs. Naph.	923	2168	52.5	23+	7626
Hy. Ptrs. Naph.	923	2167	52.5	23+	7626
Ptrs. Naph.	923	2246	52.5	23+	7626
Ptrs. Naph.	923	2170	52.5	23+	7626
Ptrs. Naph.	923	2221	52.5	23+	7626
Ptrs. Naph.	923	1861	52.5	23+	7626
Cracked Gasoline	923	2167		23+	7626
Cracked Gasoline	923	2168		23+	7626
Cracked Gasoline	923	2221		23+	7626

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Cracked Gasoline	923	2170		23+	7626
Cracked Gasoline	923	2155	52.4	23+	7626
Cracked Gasoline	923	2133	52.3	23+	7626
Cracked Gasoline	923	2192	52.3	23+	7626
Cracked Gasoline	923	1850	52.4	23+	7626
Cracked Gasoline	923	2169	53.6	23+	11348
Cracked Gasoline	923	1796	53.0	23+	11348
Cracked Gasoline	923	1749	52.3	23+	11348
Cracked Gasoline	923	2100	52.5	23+	11348
Cracked Gasoline	923	2188	52.3	23+	11348

Report of Tests Made Saturday, December 28, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	59.3	25+		
Unrefined Naph.	Car	1956	69.4	Drumright	

Report of Tests Made Monday, December 30, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Unrefined Naph.	Cars	1762	70.2	Drumright	
Unrefined Naph.	Cars	2207	70.1	Drumright	
Hy. Pts. Naph.	923	218	53.0	23+	11348
Hy. Pts. Naph.	923	1865	52.4	23+	7626
Hy. Pts. Naph.	923	1744	52.5	23+	7626
Hy. Pts. Naph.	923	2119	53.0	23+	7626
Hy. Pts. Naph.	923	2164	52.4	23+	7626
Hy. Pts. Naph.	923	2239	52.6	23+	7626
Hy. Pts. Naph.	923	2222	52.9	23+	7626
Hy. Pts. Naph.	923	2158	52.6	23+	7626
Hy. Pts. Naph.	923	2172	52.5	23+	11348
Hy. Pts. Naph.	923	2243	52.6	23+	11348
Hy. Pts. Naph.	923	1956	52.8	23+	11348
Hy. Pts. Naph.	923	2124	52.6	23+	7626
Hy. Pts. Naph.	923	1866	52.9	23+	7626

Report of Tests Made Tuesday, December 31, 1918.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	61.8	+25		
Hy. Pts. Naph.	923	2184	53.0	23+ F	11348
Hy. Pts. Naph.	923	2109	53.2	23+ F	11348
Hy. Pts. Naph.	923	1998	52.3	23+ F	11348
Hy. Pts. Naph.	923	2240	52.2	23+ F	11348

## Report of Tests Made January 1, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Unrefined Naphtha	1946	86.0		Jenks	
Unrefined Naphtha	2245	85.0		Jenks	

## Report of Tests Made Monday, January 6th, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Hy. Ptrs. Naph.	923	2113	51.9	23+ F	11348
Hy. Ptrs. Naph.	923	2120	52.2	23+ F	11348
Hy. Ptrs. Naph.	923	1850	52.3	23+ F	11348
Hy. Ptrs. Naph.	923	2203	53.3	23+ F	11348
Hy. Ptrs. Naph.	923	1948	52.4	23+ F	11348
Hy. Ptrs. Naph.	923	2216	52.1	23+ F	11348
Hy. Ptrs. Naph.	923	1955	52.1	23+ F	11348
Hy. Ptrs. Naph.	923	2224	52.1	23+ F	7626
Hy. Ptrs. Naph.	923	2198	52.0	23+ F	7626
Hy. Ptrs. Naph.	923	2105	52.1	23+ F	7626

## Report of Tests Made Monday, January 13, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	61.0	25+		
Crude Naphtha	829	60.2			
Unrefined Naphtha	2209	69.9		Drumright	

## Report of Tests Made Tuesday, January 14, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	61.0	25+		
Crude Naphtha	829	40.8			

## Report of Tests Made Wednesday, January 15, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	61.5	25+		
Gasoline	838	62.4	25+		
Gasoline	857	61.3	25+		

## Report of Tests Made Thursday, January 16, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	805	61.6	25+		
Crude Naphtha	829	61.0			
Unrefined Naph.	1936	85.8	Jenks		
Car Cracked Gas.	923 315	53.5	25+		7626
Car Cracked Gas.	923 2118	53.0	25+		7626
Car Cracked Gas.	923 2225	53.1	25+		11348
Car Cracked Gas.	923 2246	52.0	25+		11348
Car Cracked Gas.	923 2171	53.3	25+		11348
Car Cracked Gas.	923 2185	53.0	25+		11348
Car Cracked Gas.	923 2220	53.2	25+		11348
Car Cracked Gas.	923 1813	53.2	25+		11348
Car Cracked Gas.	923 1549	53.0	25+		11348
Car Cracked Gas.	923 2226	53.2	25+		7626

## Report of Tests Made Friday, January 17, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	61.5	25+		
Crude Naphtha	829	60.6			
Unfinished Naph.	2248	60.9		Drumright	
Unfinished Naph.	1956	68.8		Drumright	
Unfinished Naph.	2196	68.5		Drumright	
Unfinished Naph.	2172	68.5		Drumright	
Unfinished Naph.	2178	70.6		Drumright	
Cracked Gasoline	923 1651	54.6	25+		7626
Cracked Gasoline	923 1644	54.3	25+		7626
Cracked Gasoline	923 1614	54.3	25+		7626
Cracked Gasoline	923 1721	54.3	25+		7626

## Report of Tests Made Saturday, January 18, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts. Naptha	923 2196	54.4	25+		7626
Pts. Naptha	923 2172	54.5	25+		7626
Pts. Naptha	923 2248	54.5	25+		7626
Pts. Naptha	923 2178	54.5	25+		7626

## Report of Tests Made Tuesday, January 21, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Crack. Gasoline	923 2204	51.8	23+ F		11348
Crack. Gasoline	923 2194	51.9	23+ F		11348

Crack. Gasoline	923	1749	51.8	23+ F	11348
Crack. Gasoline	923	1852	52.0	23+ F	11348
Crack. Gasoline	923	1889	52.1	23+ F	11348
Crack. Gasoline	923	2198	52.0	23+ F	11348
Crack. Gasoline	923	2001	51.8	23+ F	11348
Crack. Gasoline	923	2224	52.3	23+ F	11348
Crack. Gasoline	923	1987	52.0	23+ F	11348

## Report of Tests Made Saturday, January 25, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Heavy painters	402	53.1	23+ F		7626
Heavy painters	380	53.0	23+ F		7626
Heavy painters	388	53.0	23+ F		7626
Heavy painters	368	52.9	23+ F		7626
Heavy painters	378	53.9	23+ F		7626
Heavy painters	355	53.1	23+ F		7626
Heavy painters	1836	53.9	23+ F		7626
Heavy painters	330	53.0	23+ F		7626
Heavy painters	359	53.1	23+ F		7626

## Report of Tests Made Tuesday, January 28, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Hy. Pts. Naphtha	923	GP422	52.4	+23f )	7626
Hy. Pts. Naphtha	923	GP427	52.4	23+f )	7626
Hy. Pts. Naphtha	923	GP354	52.5	+23f )	7626
Hy. Pts. Naphtha	923	1902	52.4	+23f )	O. K. 7626
Hy. Pts. Naphtha	923	2021	52.1	+23f )	by 7626
Hy. Pts. Naphtha	923	2157	52.4	23+f )	Mr. 7626
Hy. Pts. Naphtha	923	GP400	52.3	+23f )	R. J. M. 7626
Hy. Pts. Naphtha	923	GP394	52.2	23+f )	7626
Hy. Pts. Naphtha	923	GP336	52.3	+23f )	7626
Hy. Pts. Naphtha	923	2190	51.9	+23f )	7626

## Report of Tests Made Wednesday, January 29, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	62.5	25+ F		
Crude Naphtha	829	57.6			
Cars Heavy Ptrs.	2176	52.8	23+		11348
Cars Heavy Ptrs.	2211	52.9	23+		11348
Cars Heavy Ptrs.	2210	52.8	23+		11348
Cars Heavy Ptrs.	1955	53.0	23+		11348



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Cars Heavy Ptrs.	1944	53.1	23+	11348
Cars Heavy Ptrs.	2123	53.0	23+	11348
Cars Heavy Ptrs.	2237	53.0	23+	11348

Report of Tests Made Thursday, January 30th, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	62.5	25+		
Unrefined Naphtha	2230	86.4		Jenks	
Unrefined Naphtha	2200	83.7		Jenks	
Crude Naphtha	829	57.3			
Hy. Ptrs. Naph.	923	2218	53.2	23+	7626
Hy. Ptrs. Naph.	923	2242	53.1	23+	11348

Report of Tests Made January 31, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Pts. Naphtha	838	56.2	+24		
Crude Naphtha	829	57.2			

Report of Tests Made Saturday, February 1, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Unrefined Naphtha	2171	70.3		Drumright	
Unrefined Naphtha	1549	70.9		Drumright	
Unrefined Naphtha	2185	70.7		Drumright	

Report of Tests Made Monday, February 3, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Hvy. Pts. Naph.	923	418	52.8	23+ F	7626
Hvy. Pts. Naph.	923	399	53.2	23+ F	7626
Hvy. Pts. Naph.	923	436	53.2	23+ F	7626
Hvy. Pts. Naph.	923	457	53.3	23+ F	7626
Hvy. Pts. Naph.	923	315	53.1	23+ F	7626
Hvy. Pts. Naph.	923	1005	52.7	23+ F	7626
Nvy. Pts. Naph.	923	1721	52.8	23+ F	7626
Hvy. Pts. Naph.	923	401	52.8	23+ F	7626
Hvy. Pts. Naph.	923	2226	52.8	23+ F	11348
Hvy. Pts. Naph.	923	1796	52.8	23+ F	11348
Hvy. Pts. Naph.	923	2171	52.8	23+ F	11348
Hvy. Pts. Naph.	923	2006	52.8	23+ F	11348

Hvy. Pts. Naph.	923	2227	52.7	23+ F	11348
Hvy. Pts. Naph.	923	1799	52.7	23+ F	11348
Hvy. Pts. Naph.	923	2246	52.7	23+ F	11348
Hvy. Pts. Naph.	923	2185	52.8	23+ F	11348

## Report of Tests Made Sunday, February 9, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Hy. Pt. Naph.	923	394	52.5	23+ F	7626
Hy. Pt. Naph.	923	2238	52.6	23+ F	7626
Hy. Pt. Naph.	923	2110	52.6	23+ F	7626
Hy. Pt. Naph.	923	1790	52.8	23+ F	7626

## Report of Tests Made Monday, February 10, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Hy. Pts. Naph.	923	1963	53.0	23+	7626
Hy. Pts. Naph.	923	559	53.1	+23	7626
Hy. Pts. Naph.	923	427	52.9	23+	7626

## Report of Tests Made Wednesday, February 12, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	838	67.4	25+		
Crude Naphtha	829	54.6			
Unrefined Naphtha	2207	83.5		Jenks	
Unrefined Naphtha	2240	84.1		Jenks	

## Report of Tests Made Saturday, February 15, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cars Pts. Naphtha	Agt. 5	2190	55.0	23+	11348
Cars Pts. Naphtha	Agt. 5	8059	55.0	+23	7626
Cars Pts. Naphtha	Agt. 5	1960	55.0	25+	11348
Pts. Naphtha	Agt. 5	1965	55.0	25+ F	11348
Pts. Naphtha	Agt. 5	2188	54.7	25+	11348
Pts. Naphtha	Agt. 5	1749	54.5	25+	11348
Pts. Naphtha	Agt. 5	1644	54.9	25+	7626
Pts. Naphtha	Agt. 5	2011	55.0	25+	11348
Pts. Naphtha		1651	54.8	25+	7626
Pts. Naphtha		2158	54.8	25+	11348
Pts. Naphtha		1969	54.9	25+	11348

## Report of Tests Made Monday, February 17, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Cars Hvy. Pts. Naph.	Agt. #6	2229 54.0	+25 F		11348
Cars Hvy. Pts. Naph.	Agt. #6	418 53.9	25+ F		7626
Cars Hvy. Pts. Naph.	Agt. #6	8070 53.9	25+ F		7626
Cars Hvy. Pts. Naph.	Agt. #6	2160 53.9	25+ F		11348
Cars Hvy. Pts. Naph.	Agt. #6	315 53.9	25+ F		7626
Cars Hvy. Pts. Naph.	Agt. #6	2183 54.0	25+ F		11348
Cars Hvy. Pts. Naph.	Agt. #6	2154 54.2	25+ F		11348
Cars Hvy. Pts. Naph.	Agt. #6	2242 54.1	25+ F		11348

## Report of Tests Made Tuesday, February 18, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Hvy. Pts. Naphtha	Agt. #6	436 53.0	25+		7626
Hvy. Pts. Naphtha	Agt. #6	307 53.0	25+		7626
Hvy. Pts. Naphtha	Agt. #6	2226 53.0	25+		7626
Hvy. Pts. Naphtha	Agt. #6	2210 53.4	25+		11348
Hvy. Pts. Naphtha	Agt. #6	1614 53.0	25+ F		7626
Hvy. Pts. Naphtha	Agt. #6	2246 52.9	25+		7626
Hvy. Pts. Naphtha	Agt. #6	2171 52.9	25+		11348

## Report of Tests Made Saturday, February 21st, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	Mty			
Gasoline	805	64.7	25+ F		
Crude Naphtha	829	58.3	25+ F		
Car Unrefined Naph.	2155	85.0		Jenks	
Car Unrefined Naph.	401	85.0		Jenks	
Ptrs. Naphtha	Agt. 5 2177	54.7	+25-F		7626

## Report of Tests Made Monday, February 24, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Car Pts. Naphtha	Agt. 6	2026 54.2	25+		11348
Car Pts. Naphtha	Agt. 6	2122 54.3	25+		11348
Car Pts. Naphtha	Agt. 6	1813 54.2	25+		7626
Car Pts. Naphtha	Agt. 6	2180 54.2	25+		11348
Car Pts. Naphtha	Agt. 6	2100 54.2	25+		11348
Car Pts. Naphtha	Agt. 6	2203 54.3	25+		11348
Car Pts. Naphtha	Agt. 6	2238 54.2	25+		11348

## UNITED STATES OF AMERICA.

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Car Pts. Naphtha	Agt. 6	1963	54.1	25+	11348
Car Pts. Naphtha	Agt. 6	1762	54.3	25+	11348
Car Pts. Naphtha	Agt. 6	1790	54.2	25+	7626
Car Pts. Naphtha	Agt. 6	388	54.2	25+	7626
Car Pts. Naphtha	Agt. 6	359	54.1	25+	7626
Car Pts. Naphtha	Agt. 6	368	54.2	25+	7626
Car Pts. Naphtha	Agt. 6	427	54.2	25+	7626
Car Pts. Naphtha	Agt. 6	394	54.2	25+	7626
Car Pts. Naphtha	Agt. 6	328	54.2	25+	7626
Car Pts. Naphtha	Agt. 6	8010	54.3	25+	7626
Car Pts. Naphtha	Agt. 6	2230	54.2	25+	7626

## Report of Tests Made March 4, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Order Dr. Nos.
Car Pts. Naphtha	Agt. 6	8041	54.6	25+ 7626
Car Pts. Naphtha	Agt. 6	2243	54.6	25+ 11348
Car Pts. Naphtha	Agt. 6	418	54.5	25+ 7626
Car Pts. Naphtha	Agt. 6	8070	54.6	25+ F 7626
Car Pts. Naphtha	Agt. 6	2228	54.6	25+ 11348
Car Pts. Naphtha	Agt. 6	2189	54.6	25+ 11348
Car Pts. Naphtha	Agt. 6	315	54.6	25+ F 7626
Car Pts. Naphtha	Agt. 6	2245		11348
Car Pts. Naphtha	Agt. 6	1749	54.5	25+ 11348
Car Pts. Naphtha	Agt. 6	1960	54.6	25+ 11348
Car Pts. Naphtha	Agt. 6	2222	54.6	25+ 11348
Car Pts. Naphtha	Agt. 6	1948	54.5	25+ 11348
Car Pts. Naphtha	Agt. 6	8051	54.5	25+ 7626
Car Pts. Naphtha	Agt. 6	8045	54.6	25+ 7626
Car Pts. Naphtha	Agt. 6	8023	54.6	25+ 7626
Car Pts. Naphtha	Agt. 6	8061	54.3	25+ 7626
Car Pts. Naphtha	Agt. 6	8068	54.1	25+ 7626
Car Pts. Naphtha	Agt. 6	3031		7626

## Report of Tests Made Saturday, March 15, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Order Dr. Nos.
Pts. Naphtha	Agt. 5	8083	53.7	25+ 7626
Pts. Naphtha	Agt. 5	1865	53.8	25+ 11348
Pts. Naphtha	Agt. 5	1975	54.0	25+ 11348
Pts. Naphtha	Agt. 5	1951	53.8	25+ 11348
Pts. Naphtha	Agt. 5	1991	53.6	25+ 11348

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Report of Tests Made Monday, March 17, 1919.

Kind of Oil.	Tank.	Gravity.	Color.	Dr.	Order Nos.
Gasoline	857	68.2	25+		
Crude Naphtha	829	59.8			
Unrefined Naph.	2185	85.0		Jenks	
Unrefined Naph.	2223	84.0		Jenks	

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**Government's Exhibit 110.**

12-11-16

511 B. H. Gasoline Over @ 134 Dry @ 383  
 520 B. H. Gasoline Over @ 136 Dry @ 385  
 857 Gasoline Over @ 133 Dry @ 376  
 805 Gasoline Over @ 105 Dry @ 378

12-15-16

511 B. H. Gasoline Over @ 135 Dry @ 385  
 520 B. H. Gasoline Over @ 132 Dry @ 380  
 805 Gasoline Over @ 112 Dry @ 380  
 857 Gasoline Over @ 140 Dry @ 371

12-19-16

511 B. H. Gasoline Over @ 133 Dry @ 392  
 520 B. H. Gasoline Over @ 128 Dry @ 383  
 805 Gasoline Over @ 129 Dry @ 381  
 857 Gasoline Over @ 134 Dry @ 380

12-29-16

3 Cars Kiefer Over @ 75 Dry @ 361

1-1-17

1 Car Kiefer Over @ 76 Dry @ 350

1-3-17

520 B. H. Gasoline Over @ 139 Dry @ 383  
 805 Gasoline Over @ 117 Dry @ 360  
 857 Gasoline Over @ 140 Dry @ 372

1-4-17

6 Cars Kiefer Over @ 72 Dry @ 372

1-9-17

10 Cars Kiefer Over @ 81 Dry @ 354

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**Government's Exhibit 111.**

1-11-17

511 B. H. Gasoline Over @ 130 Dry @ 393  
805 Gasoline Over @ 103 Dry @ 392  
857 Gasoline Over @ 120 Dry @ 374  
Avg Kiefer Cars Over @ 71 Dry @ 363

1-14-17

Avg Kiefer Cars Over @ 71 Dry @ 355

1-16-17

511 B. H. Gasoline Over @ 118 Dry @ 369  
805 Gasoline Over @ 129 Dry @ 385  
857 Gasoline Over @ 130 Dry @ 370

1-19-16

511 B. H. Gasoline Over @ 128 Dry @ 380  
805 Gasoline Over @ 99 Dry @ 375  
857 Gasoline Over @ 126 Dry @ 355

1-20-16

Avg Cars of Kiefer Over @ 84 Dry @ 335

1-23-17

Avg 3 Kiefer Cars Over @ 85 Dry @ 355

1-25-17

511 B. H. Gasoline Over @ 112 Dry @ 375  
520 B. H. Gasoline Over @ 118 Dry @ 382  
805 Gasoline Over @ 113 Dry @ 357  
Avg Kiefer Cars 9 Over @ 60 Dry @ 355

1-28-17

Avg 7 Kiefer Cars Over @ 82 Dry @ 347

1-29-17

805 Gasoline Over @ 106 Dry @ 370  
857 Gasoline Dist Over @ 140 Dry @ 369

1-30-17

Agt. #1 Navy Gasoline Over @ 118 Dry @ 347  
511 B. H. Gasoline Over @ 118 Dry @ 378  
520 B. H. Gasoline Over @ 115 Dry @ 377  
805 Gasoline Over @ 139 Dry @ 378  
#1225 Kiefer Over @ 90 Dry @ 362

2-1-17

511 B. H. Gasoline Over @ 120 Dry @ 380

1444 GULF REFINING COMPANY, A CORPORATION, *vs.*

805 Gasoline Over @ 126 Dry @ 374  
Avg Kiefer Cars Over @ 82 Dry @ 346

2-4-17

855 64 Gasoline Over @ 119 Over @ 212—46.5%  
857 Gasoline Over @ 124 Over @ 212—41% Over @ 230—  
57.5% Dry @ 348 Recovery—96%

2-6-17

Avg Kiefer Cars Over @ 94 Dry @ 366  
805 Gasoline Over @ 106 Dry @ 377  
857 64 Gasoline Over @ 125 212—43.5% ; 230—61% Dry @  
342  
838 Ptrs. Nap. Over @ 195 Dry @ 410  
511 B. H. Gasoline Over @ 118 Dry @ 382

2-7-17

Avg Kiefer Cars Over @ 89 Dry @ 355  
Avg Kiefer Cars Over @ 84 Dry @ 345

2-9-17

Avg Kiefer Cars Over @ 78 Dry @ 350

2-13-17

Over—Kiefer Gas. A. B. C. Car 1331 & 934 Over @ 43 Dry @  
360

2-14-17

Avg Kieffer Cars Over @ 83 Dry @ 354

2-15-17

Avg Kieffer Gas Cars Over @ 86 Dry @ 355

2-20-17

Avg Kiefer Cars Over @ 84 Dry @ 355

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**Government's Exhibit 112.**

2-24-17

Avg Kiefer Cars Over @ 86 Dry @ 355

2-26-17

Avg Kiefer Cars Over @ 82 Dry @ 354

2-27-17

Avg Kiefer Cars Over @ 90 Dry @ 363

2-28-17

520 Navy Gasoline Over @ 120 Over 275—83% Over @  
350—95% Dry @ 352



511	Gasoline Over @ 128 Dry @ 383
805	Gasoline Over @ 104 Dry @ 384
Avg	Kiefer Cars Over @ 85 Dry @ 348
	3-3-17
Avg	Kiefer Cars Over @ 94 Dry @ 354
	3-4-17
Avg	Kiefer Cars Over @ 78 Dry @ 359
	3-7-17
520	Navy Gasoline Over @ 131 Over @ 275—80% Over @ 350—95% Dry @ 363
511	Gasoline Over @ 132 Dry @ 392
805	Gasoline Over @ 152 Dry @ 388
857	Navy Gasoline Over @ 128 Over @ 275—78% Over @ 350—95% Dry @ 357
Avg	Kiefer Cars Over @ 93 Dry @ 347
	3-10-17
Avg	Kieffer Cars Over @ 86 Dry @ 355
	3-13-17
520	Navy Gasoline Over @ 130 Over @ 275—83% Over @ 350—95% Dry @ 345 Recovery 96%
511	Gasoline Over @ 130 Dry @ 388
805	Gasoline Over @ 110 Dry @ 360
857	Navy Gasoline Over @ 127 Over @ 275—80% Over @ 350—95% Dry @ 360 Recovery 96%
Avg	Kiefer Cars Over @ 79 Dry @ 348
	3-17-17
520	Navy Gasoline Over @ 126 Over @ 275—78% Over @ 350—95% Dry @ 366 Rec. 96%
511	Gasoline Over @ 110 Dry @ 368
805	Gasoline Over @ 120 Dry @ 364
	3-19-17
Avg	Kiefer Cars Over @ 90 Dry @ 348
	3-20-17
520	Navy Gasoline Over @ 128 Over @ 275—78% Over @ 350—95% Dry @ 370 Recovery 95.5%
511	Gasoline Over @ 120 Dry @ 386
805	Gasoline Over @ 120 Dry @ 368
Avg	Kiefer Cars Over @ 91 Dry @ 356
	3-23-17
520	Navy Gasoline Over @ 130 Over @ 275—78% Over @ 350—95% Dry @ 370

1446 GULF REFINING COMPANY, A CORPORATION, *vs.*

511	Gasoline Over @ 122 Dry 370
805	Gasoline Over @ 120 Dry @ 390
857	Navy Gasoline Over @ 134 Over @ 275—83% Over @ 350—95% Dry @ 340
	3-24-17
Avg	Kiefer Cars Over @ 85 Dry @ 340
	3-27-17
Avg	Kiefer Cars Over @ 81 Dry @ 346
	3-29-17
Avg	Kiefer Cars Over @ 85 Dry @ 370
	3-30-17
520	Navy Gasoline Over @ 130 Over @ 275—78% Over @ 350—95% Dry @ 368
511	Gasoline Over @ 120 Dry @ 378
805	Gasoline Over @ 112 Dry @ 377

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**Government's Exhibit 113.**

	9-5-17
520	Navy Gasoline Over @ 150 Over @ 221—32% Over @ 275—73% Over 356—94% Dry @ 360 Recovery 95 o/o
511	Gasoline Over @ 45 Dry @ 400
805	Gasoline Over @ 100 Dry @ 390
838	Pts. Nap. Over @ 200 Dry @ 412
	9-9-17
Car	Unrefined Naphtha Over @ 98 Dry @ 368
	9-10-17
	Unrefined Naphtha Over @ 98 Dry @ 360
	9-11-17
520	Navy Gasoline Over @ 136 Over @ 221—32% Over @ 275—73% Over @ 356—94% @ 360 Recovery 95 o/o
511	Gasoline Over @ 140 Dry @ 398
805	Gasoline Over @ 125 Dry @ 400
838	Pts. Dist. Over @ 197 Dry @ 417
	Unrefined Naphtha 99 over—360 dry—
	9-12-17
	Unrefined Naphtha over @ 102 Dry @ 358
	9-13-17
	Unrefined Naphtha over 101 Dry 370

## 9-15-17

- 520 Navy Gasoline Over 152—Over 221—32% 275—739  
Over @ 356—94 Dry @ 357 Recov—95%  
512 Gasoline Over 148 Dry 392  
805 Gasoline Over 140 Dry 393  
838 Pts. Nap. Over 187 Dry 410  
Unrefined Nap. Over @ 97 Dry @ 376

## 9-17-17

- Unrefined Naph Over 99 Dry 368

## 9-18-17

- 520 Navy Gasoline Over @ 138 Over @ 221—31% Over @  
275—71% 356—93 % Dry @ 360 Recovery—95  
512 Gasoline Over @ 145 Dry @ 395  
805 Gasoline Over @ 101 Dry @ 388  
857 Gasoline Over @ 138 Dry @ 373  
Unrefined Naphtha Over 102 Dry 356

## 9-21-17

- Unrefined Naphtha Over 98 Dry 364

## 9-22-17

- Unrefined Naphtha Over 96 Dry 365

## 9-23-17

- Unrefined Naphtha over—100 Dry 372

## 9-24-17

- Unrefined Naphtha Over 96 Dry 372

## 9-25-17

- Unrefined Naphtha Over 102 Dry 376

## 9-26-17

- Unrefined Naphtha Over 100 Dry 390

## 9-27-17

- Unrefined Naphtha Over 100 Dry 376

## 9-29-17

- Unrefined Naphtha Over @ 89 Dry @ 380

## 9-30-17

- Unrefined Naphtha Over @ 87 Dry @ 385

## 10-1-17

- 520 Navy Gasoline Over @ 146 Over @ 221—32% Over @  
275—72% Over @ 356—94% Recovery 96 o/o Dry 365  
511 Gasoline Over @ 151 Dry @ 419

1448 GULF REFINING COMPANY, A CORPORATION, vs.

512 Gasoline Over @ 140 Dry @ 424  
805 Gasoline Over @ 124 Dry @ 395  
857 Gasoline Over @ 152 Dry @ 388  
838 Pts. Naphtha Over @ 201 Dry @ 441

10-2-17

Avg on Kiefers over @ 118 Dry @ 398

10-4-17

Average on Kiefer Cars Over @ 98 Dry @ 376

10-5-17

1 Car of Kiefer Over—100 Dry—388

10-7-17

520 Navy Gasoline Over—Over 221 Over—275 Over—356  
Recovery Dry  
805 Gasoline Over—120 Dry 398  
857 Gasoline Over—100 Dry—382

10-11-17

Average of Kiefer Cars Over @ 90 Dry @ 378

10-14-17

805 Gasoline Over—110 Dry—392  
857 Gasoline Over—106 Dry—388  
511 Gasoline Over—120 Dry 415  
512 Gasoline Over—141 Dry 412

10-19-17

Average on Kiefer Cars Over—91 Dry—380

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**Government's Exhibit 114.**

10-20-17

Average on Kiefer Cars Over—85 Dry—378

10-23-17

Avg. on Kiefer Cars Over—85 Dry—374

10-24-17

520 Navy Gasoline Over—145 221—32% 275—73% 356—  
95% Recovery—97% Dry—360  
511 Gasoline Over—118 Dry—415  
512 Gasoline Over—130 Dry—420  
805 Gasoline Over—100 Dry—387  
857 Gasoline Over—137 Dry 398  
838 Pts. Naphtha Over—184 Dry 436  
Avg. Kiefer Cars Over—83 Dry—375

10-25-17

Average on Kiefer Over—93 Dry—355

10-30-17

520 Navy Gasoline Over @ 154 221—31% 375—72% 356—  
 94% Recovery—95% Dry—362  
 511 Gasoline Over—124 Dry—412  
 805 Gasoline Over—102 Dry—394  
 Avg Kiefer Over 84 Dry 380

10-31-17

512 Gasoline Over—120 Dry 400  
 Avg. Kiefer Over 87 Dry 387

11-1-17

520 Navy Gasoline Over @ 151 221—30% 275—72% 356—  
 95% Recovery—96% Dry—365  
 805 Gasoline Over—112 Dry—397  
 Kiefer Car Over 93 Dry 386

11-2-17

520 Navy Gasoline Over @ 149 221—29% 275—71% 354—  
 Avg Kiefer Over 87 Dry 387  
 511 Gasoline Over—131 Dry—398  
 512 Gasoline Over—130 Dry—400  
 857 Gasoline Over—147 Dry—400  
 805 Gasoline Over—104 Dry—399  
 Avg. Unrefined Nap Cars. Over 80 Dry 400

11-3-17

520 Navy Gasoline Over @ 148 221—29% 275—72% 356—  
 95% Recovery 97% Dry—366  
 511 Gasoline Over @ 165 Dry @ 415  
 805 Gasoline Over @ 102 Dry @ 400  
 857 Gasoline Over @ 145 Dry @ 401  
 838 Pts. Naphtha Over @ 190 Dry @ 430

11-4-17

805 Gasoline Over @ 98 Dry @ 388  
 857 Gasoline Over @ 149 Dry @ 397  
 838 Pts. Naphtha Over @ 189 Dry @ 422  
 Avg. Kiefer Cars Over @ 85 Dry @ 385

11-5-17

520 Navy Gasoline Over @ 157 221—29% 275—71% 356—  
 95% Recovery—97% Dry—365  
 512 Gasoline Over @ 121 Dry @ 402  
 805 Gasoline Over @ 97 Dry @ 386

1450 GULF REFINING COMPANY, A CORPORATION, vs.

857 Gasoline Over @ 120 Dry @ 415  
 838 Pts. Naphtha Over @ 191 Dry @ 427

11-9-17

520 Navy Gasoline Over @ 158 221—29% 275—72% 356—  
 95% Recovery—97% Dry—365  
 512 Gasoline Over @ 120 Dry @ 405  
 805 Gasoline Over @ 97 Dry @ 364  
 857 Gasoline Over @ 148 Dry : 405  
 838 Pts. Naphtha Over @ 180 Dry @ 417  
 Avg Kiefer Cars Over @ 86 Dry @ 387

11-14-17

511 Gasoline Over @ 138 Dry @ 402  
 512 Gasoline Over @ 132 Dry @ 398  
 805 Gasoline Over @ 105 Dry @ 395  
 857 Gasoline Over @ 132 Dry @ 401  
 Avg Kiefer Cars Over @ 90 Dry @ 380

11-15-17

520 Navy Gasoline Over @ 150 221—29% 275—73% 356—  
 96% Recovery 98% Dry 372  
 511 Gasoline Over @ 138 Dry @ 412  
 512 Gasoline Over @ 138 Dry @ 397  
 805 Gasoline Over @ 102 Dry @ 380  
 857 Gasoline Over @ 132 Dry @ 404  
 838 Pts. Naphtha Over @ 178 Dry @ 426

11-16-17

511 Gasoline Over @ 128 Dry @ 430  
 512 Gasoline Over @ 128 Dry @ 408  
 805 Gasoline Over @ 98 Dry @ 398  
 857 Gasoline Over @ 108 Dry @ 408  
 Avg Kiefer Cars Over 88 Dry 386  
 Avg Kiefer Cars Over @ 87 Dry 380

11-21-17

520 Navy Gasoline Over 221 275 356 Recovery Dry  
 511 Gasoline Over 122 Dry 415  
 512 Gasoline Over 118 Dry 408  
 805 Gasoline Over 108 Dry 390  
 857 Gasoline Over 119 Dry 398  
 838 Pts. Naphtha Over 190 Dry 418

11-23-17

520 Navy Gasoline Over 142 221—20% 275—54% 356—  
 90% Recovery 96% Dry 408  
 511 Gasoline Over 130 Dry 408

512	Gasoline Over 108 Dry 409
805	Gasoline Over 110 Dry 314
857	Gasoline Over 114 Dry 399
838	Pts. Naphtha Over 188 Dry 398
855	S. C. Gasoline Over 136 230—34% 302—85% Above 302 8.6% Dry 34.6

## 11-26-17

520	Gasoline Over 140 Dry 418
512	Gasoline Over 116 Dry 402
805	Gasoline Over 112 Dry 412
857	Gasoline Over 128 Dry 430
Avg.	Kiefer Cars Over 96 Dry 376

## 11-28-17

520	Gasoline Over 138 Dry 414
511	Gasoline Over 126 Dry 406
512	Gasoline Over 118 Dry 402
805	Gasoline Over 98 Dry 408
857	Gasoline Over 88 Dry 396
Avg.	Kiefer Cars Over 86 Dry 381

## 11-30-17

511	Gasoline Over 128 Dry 404
512	Gasoline Over 118 Dry 407
520	Gasoline Over 136 Dry 402
805	Gasoline Over 108 Dry 401
857	Gasoline Over 100 Dry 394
Avg.	Kiefer Cars Over 92 Dry 380

## 12-1-17

511	Gasoline Over 132 Dry 403
512	Gasoline Over 110 Dry 404
520	Gasoline Over 146 Dry 402
805	Gasoline Over 100 Dry 394
857	Gasoline Over 96 Dry 396
Avg.	Kiefer Cars Over 90 Dry 395

## 12-2-17

511	Gasoline Over 140 Dry 404
512	Gasoline Over 114 Dry 402
520	Gasoline Over 148 Dry 404
805	Gasoline Over 104 Dry 381
857	Gasoline Over 88 Dry 396

## 12-3-17

805	Gasoline Over 102 Dry 396
857	Gasoline Over 100 Dry 407



1452 GULF REFINING COMPANY, A CORPORATION, *vs.*

817 Gasoline Over 114 Dry 403  
Avg. Kiefer Cars Over 90 Dry 364

12-4-17

511 Gasoline Over 130 Dry 422  
512 Gasoline Over 12.1 Dry 405  
520 Gasoline Over 154 Dry 406  
805 Gasoline Over 105 Dry 406  
857 Gasoline Over 88 Dry 398  
838 Pts. Naphtha Over 194 Dry 432

12-5-17

511 Gasoline Over 124 Dry 424  
512 Gasoline Over 110 Dry 403  
520 Gasoline Over 152 Dry 400  
805 Gasoline Over 102 Dry 405  
857 Gasoline Over 89 Dry 398  
Avg. Kiefer Cars Over 89 Dry 380

12-6-17

Avg. Kiefer Cars Over 89 Dry 397

12-8-17

Avg. Kiefer Cars Over 92 Dry 395

12-10-17

Avg. Kiefer Cars Over 90 Dry 375

Tuesday 12/11/17

Avg. Kiefer Cars Over 89 Dry 394

12/12/17

Avg. Kiefer Cars Over 84 Dry 388

12-14-17

511 Gasoline Over 140 Dry 401  
512 Gasoline Over 110 Dry 408  
520 Gasoline Over 110 Dry 418  
805 Gasoline Over 100 Dry 404  
838 Pts. Naphtha Over 195 Dry 444

12-15-17

511 Gasoline Over 140 Dry 412  
512 Gasoline Over 104 Dry 404  
520 Gasoline Over 111 Dry 422  
805 Gasoline Over 104 Dry 402  
857 Gasoline Over 133 Dry 415  
838 Pts. Naphtha Over 185 Dry 438  
Avg. Kiefer Cars Over 88 Dry 364

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**Government's Exhibit 115.**

12-17-17

Avg. Kiefer Cars—Over 86—Dry 390

12-20-17

Avg. Kiefer Cars—Over 85—Dry 386

12-24-17

511 Gasoline—Over 115—Dry 420

805 Gasoline—Over 94—Dry 376

857 Gasoline—Over 136—Dry 420

838 Pts. Naphtha Over 180—Dry 440

Avg. Kiefer Cars Over 90—Dry 378

12-27-17

Avg. Kiefer Cars—Over 98 Dry 384

12-28-17

511 Gasoline—Over at 118—Dry at 420

805 Gasoline—Over 114—Dry 410

857 Gasoline Over 95—Dry 369

838 Pts. Naphtha Over 174 Dry 415

12-29-17

Avg. Kiefer Cars—Over 92—Dry 355

12-30-17

Avg. Kiefer Car—Over 95—Dry 315

1-3-18

Avg. Kiefer Cars—Over 90—Dry 378

1-5-18

Avg. Kiefer Cars—Over 80—Dry 360

1-7-18

Avg. Kiefer Cars—Over 90—Dry 386

1-8-18

Avg. Kiefer Cars—Over 101—Dry 399

1-10-18

Avg. Kiefer Cars—Over 75—Dry 365

1-11-18

512 Gasoline—Over 130—Dry 390

805 Gasoline—Over 132—Dry 391

857 Gasoline—Over 82—Dry 365

1-20-18

805 Gasoline—Over 128—Dry 397  
857 Gasoline—Over 94—Dry 365

1-24-18

512 Gasoline—Over 140—Dry 391  
805 Gasoline—Over 132—Dry 406  
857 Gasoline—Over 83—Dry 356  
838 Pts. Naptha Over 180—Dry 397

1-26-18

Avg. Kiefer Cars—Over 100—Dry 347  
511 Gasoline—Over 110—Dry 402  
512 Gasoline—Over 133—Dry 396  
805 Gasoline—Over 128—Dry 396  
857 Gasoline—Over 79—Dry 361  
838 Pts. Naphtha Over 202—Dry 395  
Avg. Kiefer Cars—Over 90—Dry 400

1-29-18

Avg. Kiefer Cars Over 78—Dry 390

1-31-18

1 Kiefer Car #1979—Over 89—Dry 380

2-2-18

Avg. Kiefer Cars—Over 75—Dry 340

2-3-18

805 Gasoline—Over 120—Dry 400  
857 Gasoline—Over 90—Dry 370

2-4-18

Avg. Kiefer Cars—Over 90—Dry 352

2-8-18

511 Gasoline—Over 135—Dry 416  
512 Gasoline—Over 117—Dry 420  
805 Gasoline—Over 115—Dry 396  
857 Gasoline—Over 96—Dry 363  
Avg. Kiefer Cars—Over 69—Dry 362

2-11-18

Avg. Kiefer Cars, Over 75, Dry 367

2-14-18

Avg. Kiefer Cars, Over 85—Dry 255

2-18-18

Avg. Kiefer Cars, Over 75—Dry 369

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**Government's Exhibit 120.**

	Car	Gals.	Car	Gals.
GRCX	1030	8143	629	7604
	1001	8158	1356	8093
	1092	8138	1358	8092
	1209	8092	328	7062
	1239	8099	445	8140
	1602	8023	1153	8130
	1607	8016	1359	8086
	1014	4161	2008	8148
	1763	8100	1155	8130
	2006	8146	1225	8095
	437	8137	2025	8149
	621	8005	1243	8093
	1039	8157	1397	8099
	1143	8371	2013	8148
	1113	8139	1462	8093
	1378	8093	1061	8180
	1621	8016	1155	8130
	1111	8137	1607	8016
	1619	8016	950	8059
	309	6662	1507	12023
	445	8140	1038	8151
	1080	8185	1206	8089
	1385	8092	332	7065
	422	7044	1029	8225
	1100	8134	1064	8144
	1220	8096	309	6662
	168	7016	332	7065
	1054	8094	1029	8225
	1079	8147	422	7044
	1136	8144	428	8175
	1211	8093	1178	8130
	1232	8095	620	8018
	1602	8023	1083	8140
	1612	8023	1237	8099
	1763	8100	1368	8093
	2016	8153	428	8175
	961	8056	1083	8140
	1024	8145	1201	8082
	973	8056	1206	8089
	2006	8146	1225	8095
	1327	8096	1624	8014
	428	8175	1727	8101
	1278	8092	1852	8170
	1347	8090	1854	8176
	2025	8153	1856	8178

1456 GULF REFINING COMPANY, A CORPORATION, vs.

Car	Gals.		Car	Gals.
1858	8173		1400	8093
1950	8013		1708	8101
1951	8011		2106	8077
1852	8170		2107	8080
1855	8179		2116	8083
1947	8013		2120	8077
1946	8011		2149	8083
1033	8173		2154	8079
1206	8089		2159	8079
1271	8095		2197	8077
1706	8098	GPTX	401	8048
1708	8101		406	8045
924	8059		436	8042
1721	8101		503	8250 I. C. C.
1728	8101			A826
1774	8100		554	8254
1798	8100	GRCX	1250	8098
1366	8093		1430	8095
1865	8175		1816	8212
1245	8096		1854	8176
1710	8100		2123	8080
1786	8100		2166	8078
1978	8014		2197	8077 (?)
1127	8056		422	7044
1366	8093		1718	8103
1774	8100		434	8180
1978	8014		1369	8092
610	8012		1321	8089
1424	8090		1370	8088
2027	8149		1178	8130
GPTX 625	8050	I. C. C. A	1209	8092
		826 Page	434	8180
		17	1229	8086
630	8055	Supp 72	1850	8175
		I. C. C.	1853	8172
		A 785	1232	8095
GRCX 2103	8084		1974	8007
2108	8084		1268	8095
2115	8075		1270	8088
2119	8084		449	7060
2160	8084		1037	8191
2172	8082		1220	8096
2177	8085		1743	8097
2182	8080		1957	8007
2189	8079		1983	8006
2198	8080		1956	8009

	Car	Gals.		Car	Gals.
	1959	8005		1072	8138
	1245	8096		1957	8007
	2022	8152		1277	8093
	1729	8098		1431	8090
GPTX	600	8052		1607	8016
	1071	8136		1979	8015
GRCX	1624	8014		2101	8080
	1983	8006		2120	8077
	1254	8092		1228	8089
	1864	8173		1708	8101
	926	8056		1726	8097
	1981	8008		1744	8096
	1265	8089		2199	8078
	2022	8152		1116	8090
	2124	8084		1383	8096
	2106	8077		1728	8101
	2183	8078		2119	8084
	2150	8074		2160	8084
	2151	8079		1225	8095
	1335	8090		1455	8090
	1712	8101		1470	8098
	924	8059		1611	8017
	2178	8074		2113	8078
	2119	8084		2170	8084
	2171	8079		2197	8077
	764	8044		251	6510
	1211	8093		745	8078
	1446	8093		2112	8083
	1381	8090		1707	8101
	1967	8009		2173	8074
	2110	8081		2183	8078
	2249	8062	Supp 18	2157	8072
	1946	8011		1976	8006
	2245	8072	Supp 18	2194	8081
	1930	8049		1762	8098
	2110	8081		2207	8070
	2200	8072	Supp 18	1956	8009
	2230	8072	Supp 18	2185	8080
	2207	8070		2171	8079
	2240	8072		1549	8029
GPTX	401	8048	(I. C. C. A826)	1956	8009
				2172	8082
GRCX	2155	8080		2178	8074
	2185	8080		2196	8083
	2223	8065		2248	8065
	2120	8077		2209	8065

**Government's Exhibit 135.**

Confirmation of telegram forwarded from Gulf Building, Houston, Texas, via Gulf Pipe Line Company's telegraph service.

(Stamped:) Received Gasoline Dep't File .... Aug 12 1918 Copy to ..... Referred to, ..... Ansd ..... No Ans. Req'd .....

Date August 10, 1918. To W. P. Donovan At Tulsa, Okla. From C. B. Ellis At Houston, Texas.

If any of the rail lines decline to handle unrefined naphtha shipments via rail lines and junction points previously given you, hold up the cars and wire me immediately. Do not want any cars to reach Port Arthur via H&TC or T&NO but they must reach Port Arthur in connection with the Kansas City Southern. This will also apply to shipments from Electra, which should be handled by the GC&SF from Ft. Worth and Kansas City Southern from Beaumont. Have you heard anything further from the Frisco wreck and how did our tank cars and contents fare as compared with the insulated cars? Which cars stood the shock best? 10:35

**TELEGRAM**

**HIOGRUIM**

Houston Aug 10th 1918

Donovan Tulsa

If any of the rail lines decline to handle unrefined naphtha shipments via rail lines and junction points previously give you hold up the cars and wire me immediately. Do not want any cars to reach Port Arthur via H&TC or T&NO but they must reach Port Arthur in connection with the KCS. This will also apply to shipments from Electra which should be handled by the GC&SF from Ft. Worth and Kansas City Southern from Beaumont. Have you heard anything further from the Frisco wreck and how did our tank cars and contents fare as compared with the insulated cars. Which cars stood the shock best.

Ellis 1148AM

(Stamped) Received Gasoline Dep't File ... Aug 10 1918 Copy to .... Referred to .... Ans'd ..... No Ans. Req'd ....

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**Government's Exhibit 136.**

**GULF REFINING COMPANY**

Petroleum and Its Products

G. R. Nutty, Vice President,

Frick Building Annex, Pittsburgh, Pa.

Sales Department: Chas. B. Ellis, Traffic Manager.

May 12th, 1917. File 17-A.

Personal

Mr. W. P. Donovan,  
Supt. Gypsy Oil Co., Tulsa, Okla.

Mr. L. M. Klein,  
T&CA. Gulf Pipe Line Co., Tulsa, Okla.

Gentlemen:

Referring to my wire today.

The K.C.S. was the line that took the initiative to insist on publication of the 19-1/2c rate Unrefined Naphtha between Port Arthur and Oklahoma points and it was my desire to favor them with this Cleveland business via MK&T to Shreveport—KCS to Port Arthur but unfortunately in the publication of Tariff #79 page 80 is so constructed that the rate will not apply from Cleveland to Port Arthur via the MK&T and KCS.

The heading at the bottom of the page—"From Midland Valley Stations—Big Heart—Glen Pool—Muskogee—Tulsa" was inserted in error.

It was the intention that these rates apply from both Midland Valley and MK&T as headed in item 454, but by including the MV stations above T&FS only it prohibits the application of the rate from MK&T points via that line, including Cleveland.

We now have up endeavoring to have this eliminated from the tariff in less than the statutory notice of 30 days. If successful, I would prefer handling via MK&T and KCS at the present time. However, we cannot do so until supplement covering has been issued. If it is possible to hold up a few days longer I will wire you just as soon as I know the date, but if necessary to move the business be sure to route MK&T to Dallas—T&NO to Port Arthur at rate of 19-1/2c per 100 lbs.

Yours truly,

CBE-RFH

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Director General of Railroads, has taken possession and assumed control of certain transportation systems described in the Proclamation of the President, of which Proclamation and Order officers, agents and employees of said transportation systems are to take immediate and careful notice. In addition to the provisions therein contained, it is.

UNTIL FURTHER ORDER, DIRECTED THAT:

1. All officers, agents and employees of such transportation systems may continue in the performance of their present regular duties, reporting to the same officers as heretofore and on the same terms of employment.

2. Any officer, agent or employee desiring to retire from his employment shall give the usual and seasonable notice to the proper officer to the end that there may be no interruption or impairment of the transportation service required for the successful conduct of the war and the needs of general commerce.

3. All transportation systems covered by said Proclamation and Order shall be operated as a national system of transportation, the common and national needs being in all instances held paramount to any actual or supposed corporate advantage. All terminals, ports, locomotives, rolling stock and other transportation facilities are to be fully utilized to carry out this purpose without regard to ownership.

4. The designation of routes by shippers is to be disregarded when speed and efficiency of transportation service may thus be promoted.

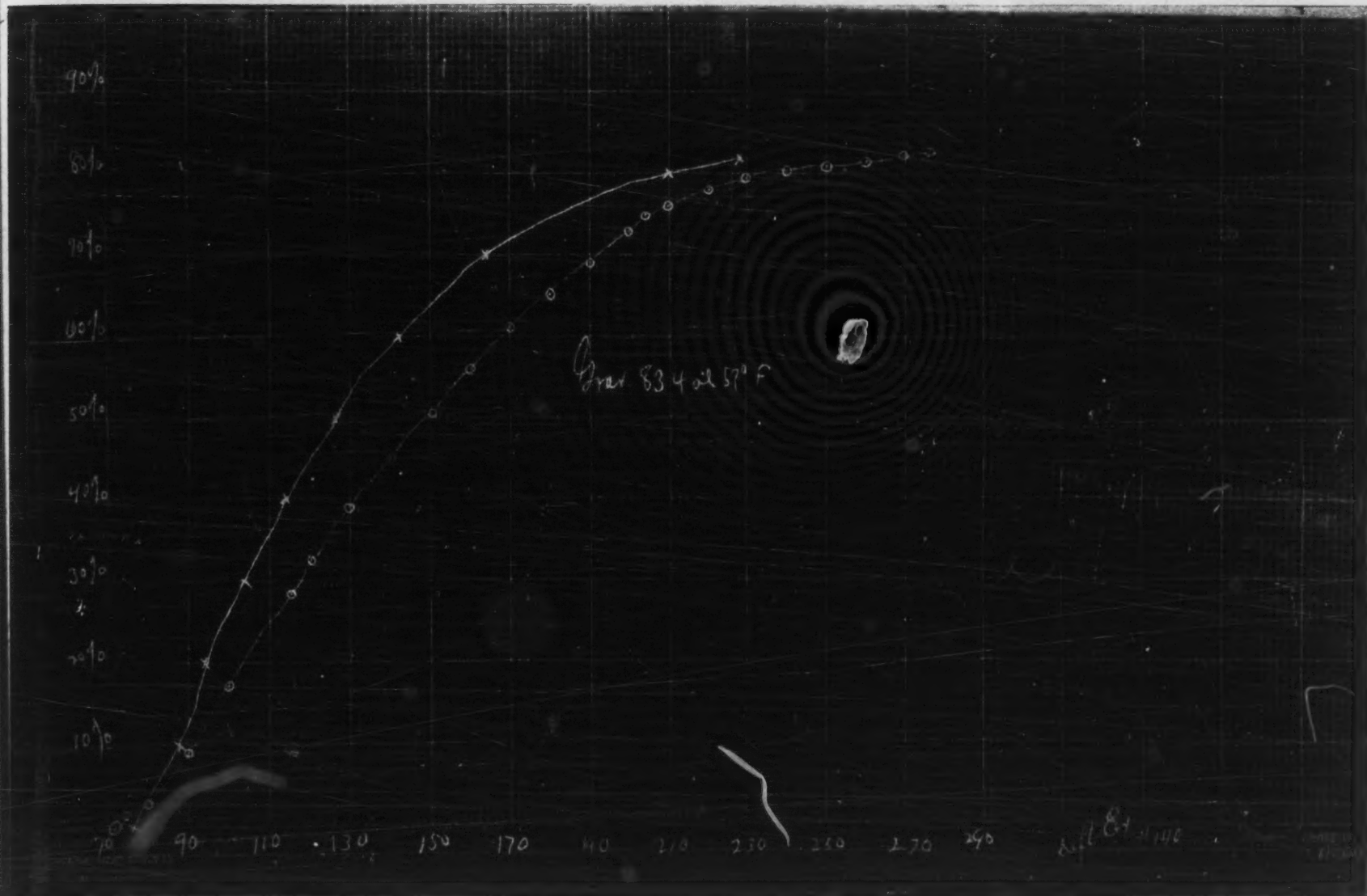
5. Traffic agreements between carriers must not be permitted to interfere with expeditious movements.

6. Through routes which have not heretofore been established because of short hauling or other causes, are to be established and used whenever expedition and efficiency of traffic will thereby be promoted; and if difficulty is experienced in such through routing, notice thereof shall by carriers or shippers or both be given at once to the Director by wire.

7. Existing schedules of rates and outstanding orders of the Interstate Commerce Commission are to be observed, but any such schedules of rates or orders as may hereafter be found to conflict with the purposes of said Proclamation or with this order shall be brought immediately by wire to the attention of the Director.

W. G. McAdoo,  
Director General of Railroads.

Defendant's Exhibit 140.



**Defendant's Exhibit 142.**

In the District Court of the United States for the Eastern District of Texas, Texarkana Division. The Texas Company, Plaintiff, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, Defendants.

The plaintiff above named by its attorneys, complaining of the defendants, shows to this Court and alleges:

**FIRST: FOR A CAUSE OF ACTION.**

1. That the plaintiff, The Texas Company, at all the times hereinafter mentioned, was and still is a domestic corporation duly created by and existing under and by virtue of the Laws of the State of Texas, having its office and principal place of business at Houston, in said State.

2. That the defendant, Texarkana & Fort Smith Railroad Company, at all the times hereinafter mentioned, was and still is a domestic corporation, duly created by and existing under and by virtue of the laws of the State of Texas, having an office in Texarkana, in said State.

3. That the defendant, Walker D. Hines, is Director General of Railroads, by virtue of appointment by the President of the United States, made under and by virtue of Section 8 of the Federal Control Act, approved March 21, 1918, and has exercised and continues to exercise supervision and control over the properties and operations of said Texarkana & Fort Smith Railroad Company, and that the said Walker D. Hines, acting in the capacity aforesaid, has issued an order directing that actions at law and suits in equity growing out of the possession, use, control or operation of any railroad or system of transportation by the Director General of Railroads, which action, suit or proceeding but for Federal Control might have been brought against the Carrier, shall be brought against the said Director General of Railroads.

4. That the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000) and it is brought to enforce rights arising under the laws of the United States and more particularly under the laws of the United States regulating Commerce, to-wit: The Act to Regulate Commerce, approved February 4, 1887, and acts supplemental thereto and amendatory thereof.

5. The plaintiff in and by its charter is authorized to and is engaged in producing, refining and distributing petroleum and its products.

6. The defendants, Texarkana & Fort Smith Railroad Company, and Director General of Railroads, are common carriers for hire by railroad, and as such are engaged in the transporting of property between places in different states of the United States, and are thus subject to the provisions of said Act to Regulate Commerce, its supplements and amendments, and the property of the said defendant, Texarkana & Fort Smith Railroad Company, is now being operated in its behalf by said Director General under said Federal Control Act.

7. Defendant, Texarkana & Fort Smith Railroad Company, has heretofore established, and there has been maintained by said Railroad Company and Director General with other connecting carriers by railroad, common arrangements for the continuous carriage of property by their railroads from Kiefer, Jenks, and other points in the State of Oklahoma, to Port Arthur, in the State of Texas, and with respect thereto, through routes and joint rates have been duly published, posted and filed with the Interstate Commerce Commission, as required by said Act to Regulate Commerce.

8. That the plaintiff, the Texas Company, at certain points in the State of Oklahoma, among which are Kiefer and Jenks, has at the times hereinafter referred to, derived a liquid from natural gas by a compression process. This liquid has been blended or mixed with a product described as naphtha, until vapor tension of the mixtures was brought below 10 pounds per square inch at a temperature of 100 degrees Fahrenheit. That said Naphtha is mixed or blended with the said liquid derived from natural gas in about equal parts therewith, and the mixed and blended product has been shipped by the plaintiff, The Texas Company, in tank cars from Kiefer and Jenks, Oklahoma, to Port Arthur, in the State of Texas, and such shipments were made continuously from Jenks during the period from January 14, 1918, to April 30, 1918, and from Kiefer during the period from January 22, 1918, to November 20, 1919, and are more particularly hereinafter set forth.

9. The said shipments so made by plaintiff, The Texas Company, from Kiefer and Jenks, in the State of Oklahoma, to Port Arthur, Texas, have been made over the following railroad lines, including the lines of Texarkana & Fort Smith Railroad Company, under through routing and joint rates: Midland Valley Railroad, Kansas City Southern Railway, Texarkana & Fort Smith Railroad Company. That all of said shipments have been made with freight charges collect and all freight charges assessed against said shipments have been

paid by the plaintiff, The Texas Company. That upon all of said shipments so made, the plaintiff, the Texas Company, has been required to pay and has paid the rates specified for Gasoline, as here set forth: that the plaintiff, The Texas Company, has paid said freight charges to Texarkana & Fort Smith Railroad Company.

## TO PORT ARTHUR, TEXAS.

## GASOLINE, CARLOAD.

## Effective Dates.

	8-29-17 to 6-24-18—inc.	6-25-18 to 7-28-18—inc.	7-29-18 to Still effective.
Kiefer, Okla.	(1) 33c	(2) 41½c	(3) 37½c
	5-2-17 to 6-24-18—inc.	6-25-18 to 7-28-18—inc.	7-29-18 to Still effective.
Jenks, Okla.	(4) 39c	(5) 49c	(6) 43½c

## TARIFF.

## ICC CO.

(1)	Item 425B, Supplement 6,	Southwestern Lines	Tariff 79	1186
	Item 660	Southwestern Lines	Tariff 79-A	1219
(2)	Item 660 & Supplement 4,	Southwestern Lines	Tariff 79-A	1219
(3)	Item 660 & Supplement 5,	Southwestern Lines	Tariff 79-A	1219
	Item 660	Southwestern Lines	Tariff 79-B	1253
	Item 660	Southwestern Lines	Tariff 79-C	1338
(4)	Page 42	Southwestern Lines	Tariff 79	1186
	Page 42	Southwestern Lines	Tariff 79-A	1219
(5)	Page 42 & Supplement 4,	Southwestern Lines	Tariff 79-A	1219
(6)	Page 42 & Supplement 5,	Southwestern Lines	Tariff 79-A	1219
	Page 47	Southwestern Lines	Tariff 79-B	1253
	Page 48	Southwestern Lines	Tariff 79-C	1338

10. That in said tariffs are carried rates on a commodity denominated "Unrefined Naphtha." That rates on said "Unrefined Naphtha" are specified in said tariffs from Kiefer and other points in the State of Oklahoma, to Port Arthur, Texas. That the rates given in said tariffs for "Unrefined Naphtha" are as between the same points lower than the rates given on "Gasoline." That all rates on "Unrefined Naphtha" given in said tariffs from different points in Oklahoma to Port Arthur, Texas, are, and at all the times herein mentioned, have been, the same.

11. That during all the period hereinabove mentioned, a competitor of the plaintiff, the Gulf Refining Company, has made shipments as a continuous practice from Kiefer and other points in Oklahoma, to Port Arthur, Texas, of a product of the same sort and kind, belonging to the same class, and

having the same general qualities, and destined for the same use, as the said product shipped by the plaintiff, The Texas Company; and said shipments made by said competitor of The Texas Company, the plaintiff, have been made in tank cars, and the service in the transportation of such shipments has been rendered under circumstances and conditions substantially similar to the circumstances and conditions under which service in the transportation of said shipments made by the plaintiff, The Texas Company, were made; that said shipments thus made by said competitor of the plaintiff, The Texas Company, have been routed and hauled over lines of the same railroads as said shipments made by the plaintiff, The Texas Company, and also over other routings. That upon all said shipments made by said competitor of the plaintiff, The Texas Company, the rates charged thereon have been the rates specified for "Unrefined Naphtha." The said rates specified for "Unrefined Naphtha" from Kiefer to Port Arthur, are given below and as well the rates from Jenks to Port Arthur, which are the same as from Kiefer to Port Arthur; said rates being applicable on all routings specified in said tariffs.

## TO PORT ARTHUR, TEXAS:

## UNREFINED NAPHTHA, Carload.

## Effective Dates.

From	5-2-17 to 6-24-18 inc.	6-28-18 to 7-28-18 inc.	7-29-18 to Still Effective
Jenks, Okla.	(1) 19½c	(2) 24½c	(3) 24c
Kiefer, Okla.	(1) 19½c	(2) 24½c	(3) 24c

## TARIFF.

(1) Item 452 p. 80,	Southwestern Lines Tariff 79, ICC No. 1186
Item 705 p. 81	Southwestern Lines Tariff 79-A ICC No. 1219
(2) Item 705 p. 81 & Sup. 4,	Southwestern Lines Tariff 79-A ICC No. 1219
(3) Item 705 p. 81 & Sup. 5,	Southwestern Lines Tariff 79-A ICC No. 1219
Item 705 p. 92	Southwestern Lines Tariff 79-B ICC No. 1263
Item 705 p. 97	Southwestern Lines Tariff 79-C ICC No. 1233

12. That there is set forth in "Exhibit 'A'" which is hereto annexed and made a part hereof, a statement showing each shipment made by the plaintiff, The Texas Company, as above alleged during said period, and the amounts paid thereon as freight charges, together with the amounts assessable as freight charges against said shipment upon basis of rates allowed to said competitor of the plaintiff.

13. That because of said difference in rates imposed for like and contemporaneous service under substantially similar circumstances and conditions, The Texas Company, the plain-



tiff, has been required to pay and has paid sums grossly in excess of the rates which it would have paid had it enjoyed the same rates as those accorded to its competitor during the period hereinabove referred to.

14. That the Gulf Refining Company has by reason of said difference in rates applied to said shipments been enabled to market certain products derived or developed from the commodities so shipped by it at an expense less than that required to be borne by the plaintiff, The Texas Company, in the marketing of similar commodities.

15. That the plaintiff, The Texas Company, markets the product derived by it from the commodity shipped as hereinabove set forth, in competition with the Gulf Refining Company in marketing its product derived from the commodity as hereinabove set forth.

16. That by reason of said unjust discrimination and because of the difference in rates hereinabove set forth as applied to the plaintiff, The Texas Company, and its competitor, the Gulf Refining Company, the plaintiff has sustained loss and been damaged in its business. That the plaintiff, The Texas Company, has been injured and damaged by the defendants' unjustly discriminatory acts and deeds forbidden, and done in violation of said Act to Regulate Commerce, its amendments and supplements, in the sum of Fifteen Thousand, One Hundred and Thirty-seven and Thirty-seven One Hundredths Dollars (\$15,137.37).

Wherefore, the plaintiff demands judgment against the defendants, and each of them, jointly and severally, for the sum of Fifteen Thousand, One Hundred Thirty-seven and Thirty-seven One Hundredths Dollars (\$15,137.37), together with interest and costs of this action.

#### SECOND: FOR A SECOND CAUSE OF ACTION.

That the plaintiff, The Texas Company, hereby incorporates, adopts, repeats and re-alleges each and every of the allegations set forth above and contained in paragraphs 1-16, inclusive, of the First Cause of Action, with the same purpose and effect as though here set out at length.

That under the tariffs herein referred to, duly posted and filed with the Interstate Commerce Commission, as required by said Act to Regulate Commerce, and effective at the times herein mentioned, the rates justly, fairly and properly applicable to the shipments herein set forth as made by the plaintiff, The Texas Company, and the only rates thus ap-

plicable are the rates charged to said competitor of the plaintiff, The Texas Company, on its shipments as above set forth, and that all freight charges against said shipments paid by the plaintiff over and above the charges which would have been made against said shipments had the same rates been accorded to the plaintiff on its shipments as were accorded to said competitor of the plaintiff on said shipments made by said competitor, were overcharges.

That the overcharges thus made by the defendants and paid by the plaintiff amount to the sum of Fifteen Thousand One Hundred Thirty-seven & Thirty-seven One Hundredths Dollars (\$15,137.37), as is set forth in "Exhibit 'A'," and the plaintiff, The Texas Company, has been injured and has suffered damage in its business by reason of said overcharges to the extent and the amount thereof.

Wherefore, the plaintiff demands judgment against the defendants, and each of them, jointly and severally, for the sum of Fifteen Thousand One Hundred Thirty-seven & Thirty-seven One Hundredths Dollars (\$15,137.37), together with interest and the costs of this action.

Robert A. John, per C. J. L.,  
James L. Nesbitt, per C. J. L.,  
Conrad J. Landram,  
Attorneys for Plaintiff.

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## SHIPMENTS FROM JENKS, OKLAHOMA, TO PORT ARTHUR, TEXAS

Date Shipped	Car		Route	Charges Assessed		Charges Based on Unrefined Rate					
	Initial Number			Freight	Tax	Total	Weight	Rate	Freight	Tax	Total
Jan 14-18	TCX 4743	MV-KCS-T&FS	179 80	5 39	185 19	54489	195	106 25	3 19	109 44	75 75
Jan 14-18	TCX 476	"	220 41	5 61	227 02	66792	195	130 24	3 91	134 15	92 87
Jan 14-18	NOX 8035	"	176 26	5 29	181 55	53413	195	104 16	3 12	107 28	74 27
Jan 18-18	TCX 4565	"	175 48	5 26	180 74	53176	195	103 89	3 11	106 80	73 94
Jan 18-18	TCX 4558	"	179 79	5 39	185 18	54483	195	106 24	3 19	109 43	75 75
Jan 18-18	TCX 4589	"	175 18	5 26	180 44	53083	195	103 51	3 11	106 62	73 82
Jan 18-18	TCX 4828	"	177 11	5 31	182 42	53671	195	104 66	3 14	107 80	74 62
Jan 28-18	TCX 2617	"	179 75	5 39	185 14	54469	195	106 21	2 19	109 40	75 74
Jan 28-18	TCX 488	"	220 32	6 61	226 93	66765	195	130 19	3 91	134 10	92 83
Jan 28-18	TCX 4706	"	179 77	5 39	185 16	54476	195	106 23	3 19	109 42	75 74
Jan 31-18	TCX 4648	"	179 83	5 39	185 22	54496	195	106 27	3 19	109 46	75 76
Feb 4-18	TCX 3104	"	175 44	5 26	180 70	53163	195	103 67	3 11	106 78	73 92
Feb 4-18	TCX 567	"	232 37	5 97	239 34	70415	195	137 31	4 12	141 43	97 91
Feb 9-18	TCX 4463	"	179 73	5 39	185 12	54463	195	106 20	3 19	109 39	75 73
Feb 16-18	TCX 4288	"	178 93	5 37	184 30	54219	195	105 73	3 17	108 90	75 40
Feb 16-18	TCX 4636	"	179 82	5 39	185 21	54489	195	106 25	3 19	109 44	75 77
Feb 25-18	TCX 4706	"	179 77	5 29	185 16	54476	195	106 23	3 19	109 42	75 74
Feb 25-18	TCX 604	"	232 39	6 97	239 36	70415	195	137 31	4 12	141 43	97 93
Feb 27-18	TCX 4485	"	179 77	5 39	185 16	54476	195	106 23	3 19	109 42	75 74
Mar 7-18	TCX 2690	"	179 55	5 39	184 94	54410	195	106 10	3 18	109 28	75 66



## Exhibit A—Continued.

## SHIPMENTS FROM KIEFER, OKLAHOMA, TO PORT ARTHUR, TEXAS

Date Shipped	Car Initial Number	Route	Charges Assessed		Total	Charges Based on Unrefined Rate			Total	Difference
			Freight	Tax		Weight	Rate	Freight		
Jan 22-18	TCX 4506	MV-KCS-T&FS	179.86	5.40	185.26	54503	.195	106.28	3.19	109.47
Jan 22-18	TCX 4161	"	179.22	5.38	184.60	54311	.195	105.91	3.18	109.09
Jan 22-18	TCX 2669	"	179.62	5.39	185.01	54430	.195	106.14	3.18	109.32
Jan 22-18	TCX 3086	"	175.33	5.36	180.69	53130	.195	103.60	3.11	106.71
Jan 22-18	TCX 2887	"	176.40	5.29	181.69	53454	.195	104.24	3.13	107.37
Jan 25-18	TCX 4193	"	178.42	5.35	183.77	54067	.195	105.43	3.16	108.59
Jan 25-18	TCX 4574	"	175.58	5.27	180.85	53150	.195	103.64	3.11	106.75
Jan 25-18	TCX 3112	"	175.41	5.26	180.67	53156	.195	103.65	3.11	106.76
Jan 25-18	TCX 3012	"	176.24	5.29	181.53	53407	.195	104.14	3.12	107.26
Jan 30-18	TCX 1302	"	175.58	5.27	180.85	53209	.195	103.76	3.11	106.87
Jan 30-18	TCX 4132	"	176.42	5.29	181.71	53460	.195	104.25	3.13	107.38
Jan 30-18	TCX 4162	"	179.33	5.38	184.71	54245	.195	105.78	3.17	108.95
Jan 30-18	TCX 623	"	232.17	6.97	239.14	70365	.195	137.19	4.12	141.31
Jan 30-18	TCX 4577	"	175.68	5.27	180.95	53236	.195	103.81	3.11	106.92
Jan 30-18	NOX 8020	"	176.30	5.29	181.59	53427	.195	104.18	3.13	107.31
Feb 6-18	TCX 3049	"	175.33	5.26	180.59	53130	.195	103.60	3.11	106.71
Feb 6-18	TCX 4524	"	179.86	5.40	185.26	54503	.195	106.28	3.19	109.47
Feb 6-18	TCX 4599	"	175.50	5.27	180.77	53176	.195	103.69	3.11	106.80
Feb 6-18	TCX 2033	"	179.82	5.39	185.21	54490	.195	106.26	3.19	109.45
Feb 6-18	TCX 1905	"	179.70	5.35	185.09	54457	.195	106.19	3.19	109.38

EXHIBIT A (Shipments from Kiefer to Port Arthur)—Continued.

Date Shipped	Car Initial Number	Route	Charges Assessed		Total	Weight	Charges Based on		Total Difference
			Freight	Tax			Rate	Freight Tax	
Feb 11-18	TCX 4516	MV-KCS-T&FS	179.85	5.40	185.25	54503	.195	106.28 3.19	109.47 75.78
Feb 11-18	TCX 574	"	232.35	6.97	239.32	70409	.195	137.30 4.12	141.42 97.90
Feb 11-18	TCX 598	"	219.23	6.58	225.81	66436	.195	129.55 3.89	133.44 92.37
Feb 11-18	NOX 8018	"	176.48	5.29	181.77	53480	.195	104.29 3.13	107.42 74.35
Feb 14-18	TCX 4223	"	178.28	5.35	183.63	54027	.195	105.35 3.16	108.51 75.12
Feb 14-18	TCX 2227	"	179.65	5.39	185.04	54443	.195	106.16 3.18	109.34 75.70
Feb 14-18	TCX 4233	"	178.24	5.35	183.59	54014	.195	105.33 3.16	108.49 75.10
Feb 14-18	TCX 4131	"	176.42	5.29	181.71	53460	.195	104.25 3.13	107.38 74.33
Feb 16-18	TCX 4428	"	179.60	5.39	184.99	54424	.195	106.13 3.18	109.31 75.68
Feb 16-18	TCX 2740	"	176.18	5.29	181.47	53387	.195	104.10 3.12	107.22 74.25
Feb 19-18	TCX 2183	"	179.82	5.39	185.21	54490	.195	106.26 3.19	109.45 75.76
Feb 19-18	TCX 4671	"	175.41	5.26	180.67	53156	.195	103.65 3.11	106.76 73.91
Feb 19-18	TCX 3003	"	176.22	5.29	181.51	53401	.195	104.13 3.12	107.25 74.26
Feb 19-18	TCX 2167	"	179.71	5.39	185.10	54457	.195	106.19 3.19	109.38 75.72
Feb 22-18	TCX 251	"	175.04	5.25	180.29	53044	.195	103.44 3.10	106.54 73.75
Feb 22-18	TCX 3105	"	175.37	5.26	180.63	53143	.195	103.63 3.11	106.74 73.89
Feb 22-18	TCX 2904	"	176.29	5.29	181.58	53420	.195	104.17 3.13	107.30 74.28
Feb 22-18	TCX 4257	"	178.89	5.37	184.26	54212	.195	105.71 3.17	108.88 75.38
Feb 22-18	TCX 4273	"	178.77	5.36	184.13	54173	.195	105.64 3.17	108.81 75.32
Feb 22-18	TCX 4287	"	178.86	5.37	184.23	54290	.195	105.69 3.17	108.96 75.37
Feb 28-18	TCX 4413	"	179.84	5.40	185.24	54496	.195	106.27 3.19	109.46 75.78
Feb 28-18	TCX 2065	"	179.85	5.40	185.25	54503	.195	106.28 3.19	109.47 75.78

Feb 28-18	TCX	2727	"	176.18	5.29	181.47	53387	.195	104.10	3.12	107.22	74.25
Feb 28-18	TCX	4748	"	179.81	5.39	185.20	54490	.195	106.26	3.19	109.45	75.75
Mar 3-18	NOX	8031	"	176.37	5.29	181.66	53447	.195	104.22	3.13	107.35	74.31
Mar 3-18	NOX	2885	"	176.31	5.29	181.60	53427	.195	104.18	3.13	107.31	74.29
Mar 3-18	NOX	1992	"	179.69	5.39	185.08	54450	.195	106.18	3.19	109.37	75.71
Mar 3-18	NOX	3004	"	176.31	5.29	181.60	53427	.195	104.18	3.13	107.31	74.29
Mar 7-18	NOX	2124	"	179.82	5.39	185.21	54490	.195	106.26	3.19	109.45	75.76
Mar 7-18	NOX	2693	"	179.82	5.39	185.21	54490	.195	106.26	3.19	109.45	75.76
Mar 7-18	NOX	4238	"	178.40	5.35	183.75	54061	.195	105.42	3.16	108.58	75.17
Mar 7-18	NOX	1802	"	175.15	5.25	180.40	53077	.195	103.50	3.11	106.61	73.79
Mar 7-18	NOX	8016	"	176.33	5.29	181.62	53434	.195	104.20	3.13	107.33	74.29
Mar 9-18	TCX	4547	"	179.90	5.40	185.30	54516	.195	106.31	3.19	109.50	75.80
Mar 9-18	TCX	4561	"	179.90	5.40	185.30	54516	.195	106.31	3.19	109.50	75.80
Mar 12-18	TCX	3070	"	175.48	5.26	180.74	53176	.195	103.69	3.11	106.80	73.94
Mar 12-18	TCX	2167	"	179.70	5.39	185.09	54457	.195	106.19	3.19	109.38	75.71
Mar 12-18	TCX	4685	"	175.29	5.26	180.55	53117	.195	103.58	3.11	106.69	73.86
Mar 14-18	TCX	4310	"	178.88	5.37	184.25	54206	.195	105.70	3.17	108.87	75.38
Mar 14-18	TCX	4620	"	179.90	5.40	185.30	54516	.195	106.31	3.19	109.50	75.80
Mar 14-18	TCX	2777	"	176.24	5.29	181.53	53407	.105	104.14	3.12	107.26	74.27
Mar 14-18	TCX	4508	"	179.85	5.40	185.25	54503	.195	106.28	3.19	109.47	75.78
Mar 16-18	TCX	2901	"	176.15	5.28	181.43	53381	.195	104.09	3.12	107.21	74.22
Mar 16-18	TCX	3107	"	175.44	5.26	180.70	53163	.195	103.67	3.11	106.78	73.92
Mar 16-18	TCX	1881	"	179.69	5.39	185.08	54450	.195	106.18	3.19	109.37	75.71
Mar 18-18	TCX	4682	"	175.55	5.27	180.82	53196	.195	103.73	3.11	106.84	73.98
Mar 18-18	TCX	2881	"	176.29	5.29	181.58	53420	.195	104.17	3.13	107.30	74.28
Mar 18-18	TCX	1036	"	131.85	3.96	135.81	39956	.195	77.91	2.34	80.25	55.56
Mar 21-18	TCX	4335	"	177.44	5.32	182.76	53770	.195	104.85	3.15	108.00	74.76



EXHIBIT A (Shipments from Kiefer to Port Arthur)—Continued.

Date Shipped	Car Initial Number	Route	Charges Assessed		Total	Weight	Charges Based on			Unrefined Rate
			Freight	Tax			Rate	Freight	Tax	Total Difference
Mar 21-18	NOX 8028	MV-KCS-T&FS	176.48	5.29	181.77	53480	.195	104.29	3.13	107.42 74.35
Mar 21-18	NOX 8020	"	176.48	5.29	181.77	53480	.195	104.29	3.13	107.42 74.35
Mar 21-18	TCX 4692	"	175.26	5.26	180.52	53110	.195	103.56	3.11	106.67 73.85
Mar 23-18	TCX 4471	"	179.93	5.40	185.33	54523	.195	106.32	3.19	109.51 75.82
Mar 23-18	TCX 2096	"	179.86	5.40	185.26	54503	.195	106.28	3.19	109.47 75.79
Mar 23-18	NOX 8018	"	176.48	5.29	181.77	53480	.195	104.29	3.13	107.42 74.35
Mar 25-18	TCX 4538	"	179.90	5.40	185.30	54516	.195	106.31	3.19	109.50 75.80
Mar 25-18	TCX 4539	"	179.62	5.39	185.01	54430	.195	106.14	3.18	109.32 75.69
Mar 27-18	TCX 3280	"	175.43	5.26	180.69	53229	.195	103.80	3.11	106.91 73.78
Mar 27-18	TCX 4131	"	176.42	5.29	181.71	53460	.195	104.25	3.13	107.38 74.33
Mar 27-18	TCX 4732	"	179.68	5.39	185.07	54450	.195	106.18	3.19	109.37 75.70
Mar 28-18	TCX 3297	"	175.33	5.26	180.59	53196	.195	103.73	3.11	106.84 73.75
Mar 28-18	TCX 1897	"	179.69	5.39	185.08	54450	.195	106.18	3.19	109.37 75.71
Mar 30-18	TCX 2635	"	179.77	5.39	185.16	54476	.195	106.23	3.19	109.42 75.74
Mar 30-18	TCX 3195	"	175.48	5.26	180.74	53177	.195	103.70	3.11	106.81 73.93
Apr 1-18	TCX 2226	"	179.69	5.39	185.08	54450	.195	106.18	3.19	109.37 75.71
Apr 1-18	TCX 3113	"	175.43	5.26	180.69	53163	.195	103.67	3.11	106.78 73.91
Apr 27-18	TCX 4691	"	175.20	5.26	180.46	53090	.195	103.53	3.11	106.64 73.82
Apr 27-18	TCX 4435	"	179.90	5.40	185.30	54516	.195	106.31	3.19	109.50 75.80
Apr 27-18	TCX 4678	"	179.41	5.26	180.67	53143	.195	103.63	3.11	106.74 73.93
Apr 27-18	TCX 3068	"	175.40	5.26	180.66	53150	.195	103.64	3.11	106.75 73.91
Apr 27-18	TCX 3058	"	175.44	5.26	180.70	53163	.195	103.67	3.11	106.78 73.92

Apr 29-18	TCX	1802	"	175.15	5.25	180.40	53077	.195	103.50	3.11	106.61	73.79
Apr 29-18	TCX	4423	"	179.77	5.39	185.16	54476	.195	106.23	3.19	109.42	75.74
Apr 29-18	TCX	566	"	232.39	6.97	235.36	70422	.195	137.32	4.12	141.44	97.92
Apr 29-18	TCX	4673	"	175.28	5.26	180.54	53117	.195	103.58	3.11	106.69	73.85
Apr 30-18	TCX	2708	"	174.70	5.24	179.94	52929	.195	103.23	3.10	106.33	73.61
Apr 30-18	TCX	3070	"	175.48	5.26	180.74	53177	.195	103.70	3.11	106.81	73.93
Apr 30-18	TCX	2033	"	179.82	5.39	185.21	54490	.195	106.26	3.19	109.45	75.76
Apr 30-18	TCX	1550	"	175.15	5.25	180.40	53077	.195	103.50	3.11	106.61	73.79
Apr 30-18	TCX	3000	"	176.15	5.28	181.43	53381	.195	104.09	3.12	107.21	74.22
Apr 30-18	TCX	3253	"	175.59	5.27	180.86	53209	.195	103.76	3.11	106.87	73.99
Apr 30-18	TCX	1633	"	175.31	5.26	180.57	53123	.195	103.59	3.11	106.70	73.87
Aug 18-19	TCX	4344	"	201.64	6.05	207.69	53770	.24	129.05	3.87	132.92	74.77
Aug 23-19	TCX	3011	"	200.35	6.01	206.36	53427	.24	128.22	3.85	132.07	74.29
Aug 26-19	TCX	4674	"	199.28	5.98	205.26	53143	.24	127.54	3.83	131.37	73.89
Aug 28-19	TCX	2410	"	201.17	6.04	207.21	53645	.24	128.75	3.86	132.61	74.60
Aug 28-19	TCX	1584	"	198.45	5.95	204.40	52919	.24	127.01	3.81	130.82	73.58
Aug 28-19	TCX	3057	"	199.28	5.98	205.26	53143	.24	127.54	3.83	131.37	73.89
Aug 30-19	TCX	4182	"	201.68	6.08	207.76	54080	.24	129.79	3.89	133.68	74.08
Aug 30-19	TCX	574	"	264.03	7.92	271.95	70409	.24	168.98	5.07	174.05	97.90
Aug 30-18	TCX	4448	"	204.08	6.12	210.20	54424	.24	130.62	3.92	134.54	75.66
Aug 31-19	TCX	1969	"	204.38	6.13	210.49	54496	.24	130.79	3.92	134.71	75.78
Aug 31-19	TCX	3052	"	199.31	5.98	205.29	53150	.24	127.56	3.83	131.39	73.90
Sept 4-19	TCX	2748	"	200.18	6.01	206.19	53381	.24	128.11	3.84	131.95	74.24
Sept 6-19	TCX	3220	"	199.25	5.98	205.23	53137	.24	127.53	3.83	131.36	73.87
Sept 22-19	TCX	3342	"	189.24	5.98	205.22	53130	.24	127.51	3.83	131.34	73.88
Sept 22-19	TCX	4175	"	203.57	6.11	209.68	54285	.24	130.28	3.91	134.19	75.49
Sept 22-19	TCX	1966	"	204.30	6.13	210.43	54483	.24	130.76	3.92	134.68	75.75

EXHIBIT A (Shipments from Kiefer to Port Arthur)—Continued.

Date Shipped	Car Initial Number	Route	Charges Assessed		Total	Weight	Charges Based on		Rate	Unrefined Rate	
			Freight	Tax			Freight	Tax		Freight	Total Difference
Sept 24-19	TCX 2057	MV-KCS-T&FS	204.30	6.13	210.43	54476	130.74	3.92	.24	130.66	75.77
Sept 25-19	TCX 4544	"	204.40	6.13	210.53	54503	130.81	3.92	.24	130.73	75.80
Sept 26-19	TCX 3012	"	200.26	6.01	206.27	53407	128.18	3.85	.24	132.03	74.24
Sept 27-19	TCX 4485	"	204.29	6.13	210.42	54476	130.74	3.92	.24	134.66	75.76
Sept 27-19	TCX 4477	"	204.40	6.13	210.53	54503	130.81	3.92	.24	134.73	75.80
Sept 29-19	TCX 4407	"	204.40	6.13	210.53	54509	130.82	3.92	.24	134.74	75.79
Sept 29-19	TCX 2770	"	200.18	6.01	206.19	53381	128.11	3.84	.24	131.95	74.24
Sept 30-19	TCX 4274	"	203.20	6.10	209.30	54186	130.05	3.90	.24	133.95	75.35
Sept 30-19	TCX 2671	"	204.04	6.12	210.16	54410	130.58	3.92	.24	134.50	75.56
Oct 17-19	TCX 2946	"	200.33	6.01	206.34	53420	128.21	3.85	.24	132.06	74.28
Oct 17-19	TCX 2850	"	200.25	6.01	206.26	53401	128.16	3.84	.24	132.00	74.26
Oct 17-19	TCX 3016	"	200.35	6.01	206.36	53427	128.22	3.85	.24	132.07	74.29
Oct 17-19	TCX 3489	"	200.10	6.00	206.10	53361	128.07	3.84	.24	131.91	74.19
Oct 17-19	TCX 5277	"	203.25	6.10	209.35	54199	130.08	3.90	.24	133.98	75.37
Oct 17-19	TCX 5066	"	199.16	5.97	205.13	53110	127.46	3.82	.24	131.28	73.85
Oct 17-19	TCX 4450	"	199.21	5.98	205.19	53123	127.50	3.83	.24	131.33	73.86
Oct 18-19	TCX 2472	"	200.10	6.00	206.10	53361	128.07	3.84	.24	131.91	74.19
Oct 18-19	TCX 4947	"	199.45	5.98	205.43	53183	127.64	3.83	.24	131.47	73.96
Oct 18-19	TCX 9070	"	200.00	6.00	206.00	53335	128.00	3.84	.24	131.84	74.16
Oct 21-19	TCX 2904	"	200.32	6.01	206.33	53120	128.21	3.85	.24	132.06	74.27
Oct 21-19	TCX 2147	"	204.30	6.13	210.43	54477	130.74	3.92	.24	134.66	75.77
Oct 21-19	TCX 4429	"	204.17	6.13	210.30	54444	130.67	3.92	.24	134.59	75.71

Oct 21-19	TCX	1905	204.21	6.13	210.34	54457	.24	130.70	3.92	134.62	75.72
Oct 21-19	TCX	2431	200.23	6.01	206.24	63394	.24	128.15	3.84	131.99	74.25
Oct 23-19	TCX	2895	200.25	6.01	206.26	63401	.24	128.15	3.84	132.00	74.26
Oct 23-19	TCX	3232	199.42	5.98	205.40	63177	.24	127.62	3.83	131.45	73.95
Oct 23-19	TCX	3268	199.48	5.98	205.46	63196	.24	127.67	3.83	131.50	73.96
Oct 25-19	TCX	2456	200.27	6.01	206.28	63407	.24	128.18	3.85	132.03	74.25
Oct 25-19	TCX	5099	199.04	5.97	205.01	63077	.24	127.38	3.82	131.20	73.81
Oct 27-19	TCX	5079	199.16	5.97	205.13	63110	.24	127.46	3.82	131.28	73.85
Oct 29-19	TCX	3107	199.36	5.98	205.34	63163	.24	127.59	3.83	131.42	73.92
Oct 29-19	TCX	5088	199.24	5.98	205.22	63130	.24	127.51	3.83	131.34	73.88
Oct 31-19	TCX	2188	204.28	6.13	210.41	54476	.24	130.74	3.92	134.66	75.75
Oct 31-19	TCX	2455	200.43	6.01	206.44	63447	.24	128.27	3.85	132.12	74.32
Oct 31-19	TCX	2089	204.36	6.13	210.49	54496	.24	130.79	3.92	134.71	75.78
Oct 31-19	TCX	5027	198.97	5.97	204.94	63057	.24	127.34	3.82	131.16	73.78
Oct 31-19	TCX	3293	199.44	5.98	205.42	63183	.24	127.64	3.83	131.47	73.95
Oct 31-19	TCX	5117	199.24	5.98	205.22	63130	.24	127.51	3.83	131.34	73.88
Nov 11-19	TCX	2477	200.03	6.00	206.03	63342	.24	128.02	3.84	131.96	74.17
Nov 11-19	TCX	4673	199.18	5.98	205.16	63117	.24	127.48	3.82	131.30	73.86
Nov 11-19	TCX	2152	204.46	6.13	210.59	54523	.24	130.86	3.93	134.79	75.80
Nov 20-19	TCX	5083	199.09	5.97	205.06	63090	.24	127.42	3.82	131.24	73.82
Nov 20-19	TCX	3176	199.35	5.98	205.33	63163	.24	127.59	3.83	131.42	73.91
Nov 20-19	TCX	3016	200.34	6.01	206.35	63427	.24	128.22	3.85	132.07	74.28
Nov 20-19	TCX	5114	199.35	5.98	205.33	63163	.24	127.59	3.83	131.42	73.91
Nov 20-19	TCX	2297	204.06	6.12	210.18	54416	.24	130.60	3.92	134.52	75.66
Nov 20-19	TCX	5072	199.16	5.97	205.13	63110	.24	127.46	3.82	131.28	73.85
Nov 20-19	TCX	5103	199.24	6.16	205.40	63130	.24	137.51	3.83	131.34	74.06
Total			31193.20	936.11	32129.31	8982544		19068.00	572.14	19640.14	13489.17

(Endorsed on back) No. 87. The Texas Company *vs.* Texarkana & Ft. Smith Railroad Company and Walker D. Hines, Director General of Railroads. Copy certified. Original bill of Complaint. Filed Jan'y 24, 1920. J. R. Blades, Clerk, by J. B. Furrentine, Deputy.

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In the District Court of the United States for the Eastern District of Texas. At Texarkana, Texas.

I, J. R. Blades, Clerk of the District Court of the United States, for the Eastern District of Texas at Texarkana, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of Original Bill of Complaint, in cause No. 87 on the Law Docket of said Court entitled: The Texas Company *vs.* Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads as the same now appears on file and of record in my office.

To Certify Which, witness my hand and the seal of said Court at Texarkana in said district, this 6th day of April, A. D. 1920.

J. R. Blades,

Clerk U. S. District Court, E. D. T.

(Seal)

By J. B. Furrentine, Deputy.

(Endorsed on back:) No. 88. U. S. District Court, Eastern District of Texas at Texarkana, Texas. The Texas Company *vs.* Texarkana & Ft. Smith Railroad and Walker D. Hines, Director General of Railroads. Certified copy of Original Bill of Complaint.

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#### **Defendant's Exhibit 143.**

In the District Court of the United States for the Eastern District of Texas. Gulf Refining Company, Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, Defendants.—No. 212, in Equity.

#### **BILL OF COMPLAINT.**

To the Honorable Judges of the District Court of the United States, for the Eastern District of Texas, Sitting in Equity:

The complainant, Gulf Refining Company, brings this suit in equity against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell, the defendants, and alleges:

## First.

The complainant, Gulf Refining Company, is a corporation duly organized and existing under the laws of the State of Texas, having its principal office and place of business at Port Arthur, in said State; and the defendant Texarkana & Fort Smith Railroad Company is a corporation organized and existing under the laws of the State of Texas, having an office at Port Arthur, in said State. Walker D. Hines is Director General of Railroads by virtue of appointment by the President of the United States, and has exercised and continues to exercise supervision and control over the properties and operations of said Texarkana & Fort Smith Railroad Company and that the said Walker D. Hines, acting in the capacity aforesaid has issued an order directing that actions at law and suits in equity growing out of the possession, use, control or operation of any railroad or system of transportation by the Director General of Railroads, which action, suit or proceedings but for Federal control might have been brought against the carrier, shall be brought against the said Director General of Railroads; and the said G. C. Weddell is agent at Port Arthur, of the said Texarkana and Fort Smith Railroad Company and of the said Walker D. Hines, Director General of Railroads, hereinafter called Director General.

## Second.

The amount in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of three thousand dollars (\$3,000), and it is brought to protect and enforce rights arising under laws of the United States, and under a law of the United States regulating commerce, to-wit: The Act of Regulate Commerce, approved February 4, 1887, and acts supplemental thereto and amendatory thereof, and the act known as the Federal Control Act, approved March 21, 1918; and it is brought in equity to avoid a multiplicity of suits at law, and because immediate and irreparable loss and damages will result to complainant unless the relief prayed for herein is granted.

## Third.

1. Complainant, in and by its charter, is authorized to and, amongst other things, is engaged in refining, receiving and shipping petroleum oils, naptha and other commodities, and for those purposes owns and operates a large refinery at Port Arthur, Texas.

2. Defendants, Texarkana & Fort Smith Railroad Company and Director General, are common carriers for hire by railroad, so engaged in transporting property between places in different states of the United States and so subject to the

provisions of said Act to Regulate Commerce, its supplements and amendments; and as the property of said defendant, Texarkana & Fort Smith Railroad Company, is now being operated in its behalf by the said Director General under said Federal Control Act; the said defendants and properties aforesaid are likewise subject to the provisions of said act, including Section 10, thereof.

3. Defendants, Texarkana & Fort Smith Railroad Company and the said Director General, at all times herein mentioned, have established and maintained with other connecting carriers by railroad, common arrangements for the continuous carriage of property wholly by their railroads, from Kiefer and elsewhere in the State of Oklahoma to Port Arthur, in the State of Texas, and with respect thereto through routes and joint rates have been established and the schedules and tariffs showing said joint rates have been duly published, posted and filed with the Interstate Commerce Commission of the United States by said common carriers, including the said defendant, as required by and in conformity with said Act to Regulate Commerce.

4. Among the joint rates so published and filed as aforesaid in force and effect at all the times herein mentioned, and at the time of the filing of this bill of complaint, is a rate covering the transportation over said route from Kiefer, Oklahoma, to Port Arthur, Texas, of unrefined naphtha in tank cars in carload lots, at twenty-four (24) cents per hundred (100) pounds.

5. Complainant, in the regular course of its business, for a long time past has been, it now is, and it intends to continue indefinitely, shipping, daily, large quantities of unrefined naphtha in carload lots from Kiefer, Oklahoma, to Port Arthur, Texas, over and by said route of said common carriers.

6. On or about July 7, 1919, while said rate of twenty-four (24) cents per hundred (100) pounds, so as aforesaid lawfully published and filed, was as aforesaid still in force and effect and the only lawful rate applicable thereto, said defendants, Texarkana and Fort Smith Railroad Company and the said Director General, by and through G. C. Weddell, their agent aforesaid, notified complainant that it would refuse longer to carry and deliver to complainant at Port Arthur its said carload lots of unrefined naphtha coming from Kiefer, Oklahoma, by said route at said rate of twenty-four (24) cents, nor unless the complainant would pay defendants' charges computed at a rate of thirty-seven and one-half ( $37\frac{1}{2}$ ) cents per hundred (100) pounds, notwithstanding defendants have at none of the times herein mentioned lawfully published and



filed with the Interstate Commerce Commission any such schedule naming a rate of thirty-seven and one-half ( $37\frac{1}{2}$ ) cents for such transportation, nor any other rate than said rate of twenty-four (24) cents applicable to said traffic; and, continuously since said date, said defendants have refused to deliver to complainant its carload lots of unrefined naphtha arriving at Port Arthur, consigned to it from Kiefer, Oklahoma, until complainant paid defendants' charges thereon computed at a rate of thirty-seven and one-half ( $37\frac{1}{2}$ ) cents per hundred pounds (100).

7. Since July 7, 1919, defendants have collected from complainant, as and for freight charges, upon the dates shown below and the cars numbered as shown, each containing the quantity in pounds set opposite thereto, the sums shown as charges being at the rate shown, to-wit:

From.	Date.	Car Number.	Pounds.	Charges Collected.	Rate Per Cwt.
Kiefer	7- 9-19	GPTX 309	52939	\$130.86	$37\frac{1}{2}c$
Kiefer	7- 9-19	GPTX 328	52914	130.81	$37\frac{1}{2}c$
Kiefer	7- 9-19	GPTX 399	52955	130.92	$37\frac{1}{2}c$
Kiefer	7- 9-19	GPTX 316	52998	131.01	$37\frac{1}{2}c$
Kiefer	7- 9-19	GPTX 446	52952	130.89	$37\frac{1}{2}c$
Kiefer	7- 9-19	GPTX 406	52952	130.89	$37\frac{1}{2}c$
Kiefer	7- 9-19	GPTX 456	53005	131.03	$37\frac{1}{2}c$
Kiefer	7- 9-19	GPTX 394	53005	131.03	$37\frac{1}{2}c$
Kiefer	7-11-19	GPTX 410	52952	130.89	$37\frac{1}{2}c$
Kiefer	7-12-19	GRCX 2439	53369	131.92	$37\frac{1}{2}c$
Kiefer	7-12-19	GRCX 2443	53328	131.82	$37\frac{1}{2}c$
Kiefer	7-12-19	GPTX 331	52939	130.87	$37\frac{1}{2}c$
Kiefer	7-12-19	MV 8042	66078	163.34	$37\frac{1}{2}c$
Kiefer	7-12-19	GRCX 2442	53698	132.74	$37\frac{1}{2}c$
Kiefer	7-12-19	GPTX 355	53965	130.92	$37\frac{1}{2}c$
Kiefer	7-12-19	GRCX 2339	53375	131.92	$37\frac{1}{2}c$
Kiefer	7-12-19	GPTX 325	52920	130.82	$37\frac{1}{2}c$
Kiefer	7-12-19	MV 8051	66119	163.44	$37\frac{1}{2}c$
Kiefer	7-12-19	MV 8099	66139	163.50	$37\frac{1}{2}c$
Kiefer	7-12-19	MV 8101	66152	163.52	$37\frac{1}{2}c$
Kiefer	7-12-19	GRCX 2445	53335	131.84	$37\frac{1}{2}c$
Kiefer	7-12-19	GRCX 2434	53308	131.78	$37\frac{1}{2}c$
Kiefer	7-12-19	GRCX 2433	53315	131.80	$37\frac{1}{2}c$
Kiefer	7-16-19	GPTX 402	52972	130.95	$37\frac{1}{2}c$
Kiefer	7-16-19	GPTX 336	52952	130.89	$37\frac{1}{2}c$
Kiefer	7-16-19	MV 8011	66112	163.43	$37\frac{1}{2}c$
Kiefer	7-16-19	MV 8023	66099	163.40	$37\frac{1}{2}c$
Kiefer	7-16-19	MV 8093	66152	163.52	$37\frac{1}{2}c$
Kiefer	7-16-19	MV 8067	66119	163.44	$37\frac{1}{2}c$

Complainant paid the foregoing charges under protest and under the coercion of the defendants' refusal to deliver same upon the tender of charges upon the basis of the lawful rate of twenty-four (24) cents per hundred (100) pounds.

8. On July . . . , 1919, there arrived at Port Arthur, Texas, over the aforesaid railroad route from Kiefer, Oklahoma, consigned to complainant, the following cars containing the quantities of unrefined naphtha set opposite the numbers thereof, to-wit:

			Weight in Pounds.
Car	GRCX	2440	53,341
Car	GPTX	457	52,952

Upon which complainant has tendered the defendants' charges computed at the lawful rate aforesaid of twenty-four (24) cents per hundred (100) pounds, and the defendants refused and still continue to refuse to deliver the same to complainant until and unless complainant shall pay charges computed at the rate of thirty-seven and one-half ( $37\frac{1}{2}$ ) cents per hundred (100) pounds.

9. Unless the defendants are restrained by this Honorable Court from doing so, they will continue to refuse to deliver the shipments of unrefined naphtha arriving at Port Arthur, as hereinbefore set forth, excepting upon the complainant paying freight charges computed at the rate of thirty-seven and one half ( $37\frac{1}{2}$ ) cents per hundred (100) pounds, being thirteen and one-half ( $13\frac{1}{2}$ ) cents per hundred pounds in excess of the rate lawfully published and filed as aforesaid, and the only redress which complainant will have in the premises is to institute suits at law to recover said overcharges, which will result in complainant's being compelled to bring a very large number of suits at law, so long as defendants continue in their intended course of attempting to exact charges computed at the rate of thirty-seven and one-half ( $37\frac{1}{2}$ ) cents per hundred (100) pounds.

10. Complainant's aforesaid consignments of unrefined naphtha move principally in cars furnished by complainant of which complainant has a number only sufficient to care for said traffic, if kept moving uninterruptedly, and if defendants are not prevented by order of this Honorable Court from so doing they will as they have threatened to do, hold up and refuse to deliver to complainant, although complainant is willing to pay the lawful rates and charges as aforesaid thereon, said cars so, as aforesaid, to be consigned to it; and as a consequence of this course of conduct on the part of defendants in demanding an unlawful rate greatly in excess of the lawful rate and in withholding complainant's cars and refusing to deliver same,

complainant will be compelled to discontinue part of its operations at great financial loss to it, which loss cannot be admeasured and recovered at law and hence is irreparable, and such loss has already begun, due to the withholding by defendants of the cars hereinbefore mentioned and will immediately continue to grow daily in proportion as such cars are withheld, and as long as said unlawful rates are demanded by defendants.

11. The course of said defendants in so collecting the charges in excess of those named in the tariffs so lawfully published and filed with the Interstate Commerce Commission as aforesaid, and in refusing to deliver to complainant its property until and unless such overcharges shall be paid, is contrary to the provisions of the Act to Regulate Commerce, and denies to this complainant the right provided by said Act to Regulate Commerce to have its property transported at no greater cost than that named in the schedules lawfully published and filed with the Interstate Commerce Commission.

Forasmuch, therefore, as complainant is remediless by the strict rules of the common law, and to the end therefore that complainant may have the relief which it can obtain in a court of equity only, and that the defendants may answer the premises aforesaid, but not upon oath or affirmation, both of which are expressly waived by it, the complainant now prays this honorable court to grant to it an interlocutory injunction, issuing out of and under the rules and practice of said court, to be directed to said defendants, Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, their agent, restraining them and each of them, their successors, agents, servants, employees and assistants, from collecting or attempting to collect charges upon shipments of unrefined naphtha consigned from Kiefer, Oklahoma, to complainant at Port Arthur, Texas, in excess of the lawful rate of twenty-four (24) cents per hundred (100) pounds, so long as the same shall remain in force and effect, as provided by the Act to Regulate Commerce, and restraining them from refusing to deliver to complainant such consignments without the payment by complainant of charges computed at any rate in excess of said lawful rate, and that at the final hearing herein such injunction be made permanent; and that complainant may have such further and other relief in the premises as under the circumstances of the case may be required.

And as in duty bound complainant will ever pray.

Dated, 21st day of July, A. D. 1919.

Jno. E. Green, Jr.,  
Solicitor for Complainant.

Of Counsel—F. C. Proctor, Houston, Texas.

Frank M. Swacker, Wilkins Building, Washington, D. C.

The State of Texas, County of Harris:

John W. Tryon, of lawful age being first duly sworn upon oath states that he is manager at Port Arthur, Texas, for the Gulf Refining Company, the complainant in the above entitled bill; that he has read said bill and knows the contents thereof, and that the matters and things stated therein as facts are true, and that the matters stated upon belief he verily believes to be true.

John W. Tryon.

Subscribed and sworn to before me this the 21st day of July, A. D. 1919. M. Saunders, Notary Public in and for Harris County, Texas.

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In the District Court of the United States for the Eastern District of Texas. Gulf Refining Company, Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, Defendants.—No. 212, in Equity.

#### AMENDMENT TO BILL OF COMPLAINT.

To the Honorable Judges of the District Court of the United States, for the Eastern District of Texas, sitting in equity:

Comes now the complainant, Gulf Refining Company, and, upon leave first had and obtained from this Honorable Court, files this Amendment to its Bill of Complaint herein and amends Paragraph 5 of its complaint herein filed to read as follows:

5. Complainant, in the regular course of its business for a long time past, it is now, and it intends to continue indefinitely, shipping daily large quantities of unrefined naptha in earload lots from Kiefer, Oklahoma, to Port Arthur, Texas, over and by said route of said common carrier; said shipments for more than a year last past have averaged approximately seven earloads per day, and complainant intends to ship daily an equally large number of earloads of said unrefined naptha in the future.

And in addition to the relief prayed in the original bill herein, complainant prays upon final hearing herein that the court find and decree that the shipments set forth in Paragraph 7 of the Bill of Complaint in fact consisted in unrefined naptha; that the legal rate thereon was twenty-four (24) cents per hundred pounds, and that the defendant unlawfully im-

posed upon and collected from complainant charges computed at the rate of thirty-seven and one-half ( $37\frac{1}{2}$ ) cents; and that defendants be required to repay to complainant the excess so as aforesaid collected by them from complainant with respect to said shipments; and that the court further find and decree that the two cars set forth in paragraph 8 of the Bill of Complaint contained unrefined naphtha, and that the legal rate thereon was 24 cents per hundred pounds.

And as in duty bound complainant will ever pray.

Dated this 24th day of July in the year of our Lord, 1919.

Jno. E. Green, Jr.,

Solicitor for Complainant.

Of Counsel—F. C. Proctor, Houston, Texas.

Frank M. Swacker, Wilkins Building, Washington, D. C.

The State of Texas, County of Harris:

Overton E. Abel, of lawful age being first duly sworn upon oath states that he is Assistant Superintendent at Port Arthur, Texas, for the Gulf Refining Company, the complainant in the above entitled bill; that he has read said amendment to the bill of complaint and knows the contents thereof, and that the matters and things stated therein as facts are true, and that the matters stated upon belief he verily believes to be true.

Overton E. Abel.

Subscribed and sworn to before me this the 25th day of July, A. D. 1919.

M. Saunders,

Notary Public in and for Harris County, Texas.

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United States of America, Fifth Circuit, Eastern District of Texas—ss.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify the foregoing to be a true and correct copy of the Bill of Complaint and Amendment to Bill of Complaint in Cause No. 212, on the Equity Docket of said court, entitled Gulf Refining Company vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, as full as the same now appears on file in my office at Beaumont.

To Certify Which, witness my official hand and the seal

of said court at Beaumont, in said District, this 5th day of April A. D. 1920.

(Seal)

(Signed) J. R. Blades,  
Clerk U. S. District Court, E. D. T.

United States of America, Eastern District of Texas.

I, W. L. Estes, United States District Judge for the Eastern District of Texas, do hereby certify that J. R. Blades whose genuine signature appears signed to the foregoing certificate was, at the time of signing same, and is now, Clerk of the District Court of the United States for the Eastern District of Texas and that his official acts as such are entitled to full faith and credit.

I further certify that said altercation is in due form.

Given under my hand at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Signed) W. L. Estes,  
United States District Judge for E. D. T.

United States District Court, Eastern District of Texas.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify, that the Honorable W. L. Estes whose name appears signed to the foregoing certificate, was at the time of signing same, and is now, the judge of the United States District Court for the Eastern District of Texas, and that his said signature is genuine.

To certify which, witness my hand and seal of the said Court at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Seal)

(Signed) J. R. Blades,  
Clerk United States District Court,  
Eastern District of Texas.

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**Defendant's Exhibit 144.**

In the District Court of the United States for the Eastern District of Texas. Gulf Refining Company, Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, Defendants.—No. 212, in Equity.

This case came on to be heard on bill and answer and motion of the complainant for an injunction pendente lite, and on motion of the defendants to dismiss the bill, and was argued by counsel, Mr. John E. Green, Jr., and Mr. Frank M.

Swacker, for complainant, and Mr. J. M. Souby and Mr. Y. D. Carroll for defendants, and upon consideration of the verified bill, the amendments thereto and the affidavit of O. E. Abel, the answer and the aforesaid motions; it is now

Ordered that the motion to dismiss be and it hereby is overruled; and it is further

Ordered that the defendants and each of them, Walker D. Hines, Director General of Railroads of the United States, Texarkana and Fort Smith Railroad Company and G. C. Weddell, their officers, agents, assistants, and employees, and all persons serving under them, be, and they are hereby enjoined until further order of this court from refusing to transport and deliver to complainant, Gulf Refining Company, shipments described by said complainant as unrefined naphtha moving from Kiefer and elsewhere in the State of Oklahoma to Port Arthur, in the State of Texas, upon the tender or payment to said defendants by said complainant of freight charges thereon at the rates lawfully published and filed with the Interstate Commerce Commission applicable to shipments of unrefined naphtha in carload lots (said rate at the present time being twenty-four (24) cents per hundred (100) pounds); and said defendants, their officers, agents, assistants and employees, and all persons serving under them, are further enjoined, until further order of this court, from attempting to collect from said complainant upon shipments in carload lots moving over the lines of railroad under their control, and those connected therewith from Kiefer and elsewhere in the State of Oklahoma to Port Arthur, in the State of Texas, described by said complainant as unrefined naphtha, charges upon rates in excess of those lawfully published and filed with the Interstate Commerce Commission of the United States as applicable to unrefined naphtha; Provided, that complainant, Gulf Refining Company give bond to defendants in the sum of Thirty Thousand (\$30,000.00) Dollars, conditioned that said complainant will abide the decision which may be made herein, and pay all sums of money and costs that may be adjudged against it, if this injunction be dissolved in whole or in part; And it is Further Ordered that defendants have leave to apply to this court at any time to increase said bond upon a showing of its insufficiency.

Ordered that a copy of this decree be served upon said defendants.

Entered this 26th day of July, A. D. 1919.

J. C. Hutchinson, Jr.,  
United States District Court.



(Endorsed) Eq. No. 212. Gulf Refining Company vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell. Interlocutory Decree. Filed July 26, 1919. J. R. Blades, Clerk, by H. C. Blades, Deputy.

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United States of America, Fifth Circuit, Eastern District of Texas—ss.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify the foregoing to be a true and correct copy of the Interlocutory Decree, in Cause No. 212, on the Equity Docket of said court, entitled Gulf Refining Company vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, as fully as the same now appears on file in my office at Beaumont.

To Certify Which, witness my official hand and the seal of said Court at Beaumont, in said District, this 5th day of April, A. D. 1920.

(Seal)

(Signed) J. R. Blades,  
Clerk U. S. District Court, E. D. T.

United States of America, Eastern District of Texas.

I, W. L. Estes, United States District Judge for the Eastern District of Texas, do hereby certify that J. R. Blades *whose* genuine signature appears signed to the foregoing certificate was, at the time of signing same, and is now, Clerk of the District Court of the United States for the Eastern District of Texas and that his official acts as such are entitled to full faith and credit.

I further certify that said alteration is in due form.

Given under my hand at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Signed) W. L. Estes,  
United States District Judge for  
the Eastern District of Texas.

United States District Court, Eastern District of Texas.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify, that the Honorable W. L. Estes whose name appears signed to the foregoing certificate, was at the time of signing same, and is now, the Judge of the United States District Court for the Eastern District of Texas, and that his said signature is genuine.

To certify which, witness my hand and seal of the said Court at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Seal)

(Signed) J. R. Blades,

Clerk United States District Court,  
Eastern District of Texas.

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**Defendant's Exhibit 145.**

In the District Court of the United States, for the Eastern District of Texas. Gulf Refining Company, Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, Defendants.—No. 212, in Equity.

State of Texas, County of Harris:

Overton E. Abel, of lawful age, being first duly sworn, upon oath deposes and says:

That I am, and for several years last past have been, employed by the Gulf Refining Company, the complainant in this proceeding, having been during the last three years, and am at present, Assistant Superintendent of its plant at Port Arthur, Texas; as such Assistant Superintendent I am in charge of the outside works and distillation at said plant; and it is a part of my duty to receive and examine and dispose of the cars of unrefined naphtha received by the Gulf Refining Company at Port Arthur, Texas, coming from Kiefer, Oklahoma, and other places in Oklahoma, over the line of railroad of the Texarkana & Fort Smith Railroad Company; and it is also a part of my duty to know and understand the various grades of naphtha and petroleum products; that all of the shipments billed as unrefined naphtha received at Port Arthur, Texas, for more than a year last past coming from Kiefer and elsewhere in Oklahoma over the Texarkana & Fort Smith Railroad, those mentioned in the bill of complaint in this cause, including the two cars now held by the railway company, as set forth in the petition of the complainant, described upon such shipments as containing unrefined naphtha, are, in fact, unrefined naphtha, and not gasoline or any other commodity; that said shipments of unrefined naphtha have during that time averaged seven carloads per day, and that the Gulf Refining Company intends to continue shipping daily an equally large number of carloads of said commodity in the future; that the term "unrefined naphtha" has been, is, and will be, applied as a shipping description with respect only to shipments in fact consisting of unrefined naphtha; that all of the shipments coming to the plant at Port Arthur described as unrefined naphtha

are the same commodity as that contained in the two cars described in the complaint as being held by the carrier; that the detention of the two cars by the carrier set forth in the complaint is already causing substantial interference with complainant's business in that it interferes with the regularity of the movement of unrefined naphtha resulting in financial loss to complainant, and that the continued detention by the carrier of the cars, daily arriving, consigned to complainant will ultimately compel it to shut down parts of its operations at very substantial loss to it, the exact amount of which, however, it is practically impossible to determine because of losses which will result indirectly therefrom.

Overton E. Abel.

Sworn to and subscribed before me, this the 5th day of July, A. D. 1919.

(Seal)

M. Sanders,

Notary Public in and for Harris County, Texas.

(Endorsed) No. 212. In the District Court of the United States, for the Eastern District of Texas. Gulf Refining Company, Complainant, vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, Defendants. Affidavit of Overton E. Abel. Filed Jul 25 1919, J. R. Blades, Clerk, by H. C. Blades, Deputy.

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United States of America, Fifth Circuit, Eastern District of Texas—ss.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify the foregoing to be a true and correct copy of the Affidavit of Overton E. Abel, in Cause No. 212, on the Equity Docket of said Court, entitled Gulf Refining Company vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, as fully as the same now appears on file in my office at Beaumont.

To Certify Which, witness my official hand and the seal of said court at Beaumont, in said District, this 5th day of April, A. D. 1920.

(Seal)

(Signed) J. R. Blades,

Clerk U. S. District Court, E. D. T.

United States of America, Eastern District of Texas:

I, W. L. Estes, United States District Judge for the Eastern District of Texas, do hereby certify that J. R. Blades whose genuine signature appears signed to the foregoing cer-

tificate was, at the time of signing same, and is now, clerk of the District Court of the United States for the Eastern District of Texas and that his official acts as such are entitled to full faith and credit.

I further certify that said alteration is in due form.

Given under my hand at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Signed) W. L. Estes,

U. S. District Judge for the E. D. T.

United States District Court, Eastern District of Texas.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify, that the Honorable W. L. Estes whose name appears signed to the foregoing certificate, was at the time of signing same, and is now, the Judge of the United States District Court for the Eastern District of Texas, and that his said signature is genuine

To Certify Which, witness my hand and seal of the said Court at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Seal)

(Signed) J. R. Blades,

Clerk United States District Court,  
Eastern District of Texas.

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#### **Defendant's Exhibit 146.**

In the District Court of the United States for the Eastern District of Texas. Gulf Refining Company, Complainant, vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell, Defendants—In Equity, No. 212.

#### **DEMURRER AND ANSWER.**

To the Honorable Judges of the District Court of the United States for the Eastern District of Texas, sitting in Equity:

Now come the above named defendants and demur to the bill of complaint filed by complainant in this cause, for the reason that said bill does not state facts sufficient to confer jurisdiction upon this court as a court of equity to entertain said complaint. Wherefore, defendants pray that said bill be dismissed.

Subject to the foregoing demurrer and without waiving same, for their answer to the complaint filed herein, defendants state:

I.

These defendants admit the allegations contained in the first paragraph of said complaint.

II.

These defendants deny that the amount in controversy herein, exclusive of interests and costs, equals the sum or value of \$3000.00 and likewise deny that the refusal of this court to grant the relief prayed for by complainant herein will occasion immediate and irreparable loss and damage to the complainant, or will result in a multiplicity of suits at law.

These defendants are without information as to the allegations contained in the first section of paragraph third of the complaint and ask for proof thereof.

These defendants admit the allegations contained in sections two, three and four of said paragraph third of the complaint.

These defendants deny that complainant has been in the past, is now, or intends to continue shipping unrefined naphtha in any quantities from Kiefer, Oklahoma, to Port Arthur, Texas, as alleged in section five of said paragraph third of the complaint, but on the contrary defendants allege, according to their information and belief, that such shipments referred to in said section consist of gasoline.

In answer to section six of said paragraph third of the complaint, defendants state that while there was in effect as alleged by complainant a rate of 24 cents per hundred pounds applicable between the points in question on unrefined or unfinished naphtha, there was and is concurrently in effect a rate of 37½ cents per hundred pounds applicable between said points on gasoline and that in accordance with their information and belief defendants have, since July 7, 1919, asked and demanded of complainant for the transportation of the commodity tendered by complainant for transportation in carload lots from Kiefer, Oklahoma, to Port Arthur Texas, a rate of 37½ cents per hundred pounds, which is the rate lawfully applicable to such transportation on gasoline.

Defendants are not informed as to the shipments alleged by complainant to have been made in section seven of paragraph third and, therefore, ask for proof thereof.

Defendants are informed that the two carload shipments referred to in section eight of said paragraph third contained gasoline and not unrefined naphtha and furthermore that same were transported from Glenn Pool, Okla., instead of Kiefer, Okla., as alleged in said section. Defendants admit, however,

that they did refuse to deliver the two carload shipments in question to complainant until and unless complainant should pay freight charges thereon computed at the rate lawfully applicable on gasoline moving between said points in carload lots.

In answer to the allegations contained in section nine of said paragraph third, these defendants state that so long as they continue to believe that shipments of the commodity in controversy herein made by complainant between the points in question consist of gasoline, they will continue to demand of complainant upon the delivery thereof at destination, the rate lawfully applicable on gasoline; but defendants deny that complainant does not or will not have full and adequate remedies at law for any and all damages which it may suffer as a result of defendants' actions in the premises.

Defendants allege that any holding up or delaying of cars such as is referred to in section ten of paragraph third of the complaint will be due wholly to the action of complainant in refusing to accept shipments which may be tendered it for delivery by defendants and to pay the charges assessed thereon by defendants and will not be due to any action upon the part of these defendants against which complainant is entitled to relief in equity at the hands of this court.

Defendants deny the allegations contained in section eleven of said paragraph third, but state on the contrary that they are undertaking to comply with the provisions of the Act to Regulate Commerce by assessing and collecting for the transportation of the shipments in question the rate lawfully applicable thereon.

Wherefore, having answered, these defendants pray that said complaint may be dismissed.

Orgain, Butler, Bolinger & Carroll,  
Solicitors for Defendants.

S. W. Moore, J. M. Souby, Of Counsel.

(Endorsed) No. 212. Gulf Refining Company, Complainant vs. Texarkana & Fort Smith Railroad Company, et al., Defendants. Demurrer and Answer. Filed Jul. 24, 1919. J. R. Blades, Clerk, by H. C. Blades, Deputy.

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United States of America, Fifth Circuit, Eastern District of Texas—ss:

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify

the foregoing to be a true and correct copy of the Demurrer and Answer in Cause No. 212, on the Equity Docket of said Court, entitled Gulf Refining Company vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, as fully as the same now appears on file in my office at Beaumont.

To Certify Which, witness my official hand and the seal of said court at Beaumont, in said District, this 5th day of April, A. D. 1920.

(Seal)

(Signed) J. R. Blades,

Clerk U. S. District Court, E. D. T.

United States of America, Eastern District of Texas.

I, W. L. Estes, United States District Judge for the Eastern District of Texas, do hereby certify that J. R. Blades whose genuine signature appears signed to the foregoing certificate was, at the time of signing same, and is now, Clerk of the District Court of the United States for the Eastern District of Texas and that his official acts as such are entitled to full faith and credit.

I further certify that said altercation is in due form.

Given under my hand at Beaumont, Texas this 5th day of April, A. D. 1920.

(Signed) W. L. Estes,

U. S. District Judge for the E. D. T.

United States District Court. Eastern District of Texas.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas do hereby certify, that the Honorable W. L. Estes whose name appears signed to the foregoing certificate, was at the time of signing same, and is now, the Judge of the United States District Court for the Eastern District of Texas, and that his said signature is genuine.

To certify which, witness my hand and seal of the said Court at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Seal)

(Signed) J. R. Blades,

Clerk United States District Court,  
Eastern District of Texas.

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**Defendant's Exhibit 147.**

In the District Court of the United States for the Eastern District of Texas. Gulf Refining Company. Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell, Defendants.—No. 212, in Equity.

Now comes the Gulf Refining Company, complainant in the above entitled cause, and moves for the issuance of a preliminary injunction in accordance with the prayer of its bill, and for an order of notice upon this motion.

John E. Green, Jr.,

Solicitor for Complainant.

Of Counsel F. C. Proctor, Houston, Texas.

Frank M. Swacker, Wilkins Building, Washington D. C.

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**ORDER.**

In the District Court of the United States for the Eastern District of Texas, In Chambers:

The Clerk of the United States District Court for the Eastern District of Texas, is ordered to issue a summons to defendants to show cause, if any there be, why a preliminary injunction should not issue as prayed; the summons to be returnable on the 24th day of July, A. D. 1919, at 10 a. m., at Houston, Texas.

J. C. Hutcheson, Jr., Judge.

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United States of America. District Court of the United States for the Eastern District of Texas. Gulf Refining Company, Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell, Defendants.—No. 212, in Equity.

The President of the United States of America—Greeting.

To the defendant, Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell:

You are hereby commanded to appear before the Honorable J. C. Hutcheson, Jr., the duly designated and acting United States District Judge for the Eastern District of Texas, at the Federal Building, at Houston, Texas, on the 24th day of July, A. D. 1919, at 10 o'clock A. M., and show cause, if any there be, why a preliminary injunction should not issue

restraining the Texarkana and Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, agent of said Railroad and of said Director General from attempting to collect upon shipments of unrefined naphtha consigned from Kiefer, Oklahoma, to the Gulf Refining Company at Port Arthur, Texas, charges in excess of the lawful rate of twenty-four (24) cents per hundred (100) pounds, and from refusing to deliver said Gulf Refining Company's cars when the lawful rate of twenty-four (24) cents is tendered.

Witness the Honorable J. C. Hutcheson, Jr., District Judge of said Court this the 21st day of July, in the year of our Lord One Thousand Nine Hundred and Nineteen, and of our Independence, One Hundred and Forty-three.

(J. B. Blades, Clerk)

By (H. C. Blades, Deputy)

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United States of America, District Court of the United States for the Eastern District of Texas. Gulf Refining Company, Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell, Defendants.—No. 212 in Equity.

United States Marshal's Office, Eastern District of Texas.

I hereby certify that I received the within *write* on the 21st day of July, A. D. 1919, and personally served the same on and by delivering to, and leaving with, G. C. Weddell, defendant named therein personally in the County of Jefferson, in said District, *a copy* of the attached subpoena and also a copy of the bill of complaint in Equity No. 212, together with copy of complainant's application for a preliminary injunction and a copy of the order of the Honorable J. C. Hutcheson, Jr., United States District Judge designated and acting in the Eastern District of Texas.

B. F. Sherrell, United States Marshal.

J. F. McDonald, Deputy.

Dated at Beaumont, in the Eastern District of Texas, the 22nd day of July, A. D. 1919.

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United States of America, Fifth Circuit, Eastern District of Texas—ss.

I, J. B. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify

the foregoing to be a true and correct copy of the Application for Preliminary Injunction and order thereon; order to show cause and marshal's return thereon in Cause No. 212, on the Equity Docket of said court, entitled Gulf Refining Company vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads and G. C. Weddell, as fully as the same now appears on file in my office at Beaumont.

To Certify Which, witness my official hand and the seal of said court at Beaumont in said district, this 5th day of April A. D. 1920.

(Seal)

(Signed) J. R. Blades,  
Clerk U. S. District Court, E. D. T.

United States of America, Eastern District of Texas.

I, W. L. Estes, United States District Judge for the Eastern District of Texas, do hereby certify that J. R. Blades whose genuine signature appears signed to the foregoing certificate was, at the time of signing same, and is now, Clerk of the District Court of the United States for the Eastern District of Texas and that his official acts as such are entitled to full faith and credit.

I further certify that said altercation is in due form.

Given under my hand at Beaumont, Texas, this 5th day of April A. D. 1920.

(Signed) W. L. Estes,  
United States District Judge for  
the Eastern District of Texas.

United States District Court, Eastern District of Texas.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify that the Honorable W. L. Estes whose name appears signed to the foregoing certificate, was at the time of signing same, and is now, the Judge of the United States District Court for the Eastern District of Texas, and that his said signature is genuine.

To certify which, witness my hand and seal of the said Court at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Signed) J. R. Blades,  
Clerk United States District Court,  
Eastern District of Texas.

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**Defendant's Exhibit 148.**

In the District Court of the United States for the Eastern District of Texas. Gulf Refining Company, Complainant, against Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, Defendants.—No. 212, in Equity.

Whereas, the Gulf Refining Company plaintiff, in the above styled cause pending in the said court, has this day sued out in said court an injunction to restrain Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, defendants in said suit, from refusing to transport and deliver certain shipments at freight rates lawfully applicable thereto and from attempting to collect charges thereon in excess of those lawfully applicable as described in the petition for injunction.

Now therefore, know all men by these presents, that we, the Gulf Refining Company, as PRINCIPAL, and American Surety Company of New York, as SURETY, do hereby acknowledge ourselves bound to pay to Texarkana & Fort Smith Railroad Company, and Walker D. Hines, Director General of Railroads, and G. C. Weddell the sum of Thirty Thousand (\$30,000) Dollars, conditioned that the Gulf Refining Company, plaintiff in said suit, will abide the decision which may be made therein, and pay all sums of money and costs that may be adjudged against it, if the injunction granted in said suit be dissolved in whole or in part.

Witness our hands this the 26 day of July, A. D. 1919.

Gulf Refining Company Principal.

American Surety Company of New York,  
Surety.

By J. W. Tucker, Attorney in fact.

Countersigned By Sterling Myer, Atty.

July 26, 19.

Approved and ordered filed.

Jos. C. Hutcheson, Jr., Judge.

(Endorsed) Eq. No. 212. Gulf Refining Co. vs. Texarkana & Ft. Smith Railroad Co. et al. Bond of Gulf Refining Co. Filed Jul. 26, 1919, J. R. Blades, Clerk, by H. C. Blades, Deputy.

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United States of America, Fifth Circuit, Eastern District of Texas—ss.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas, do hereby certify

the foregoing to be a true and correct copy of the Bond of Gulf Refining Company, in cause No. 212, on the Equity Docket of said Court, entitled Gulf Refining Company vs. Texarkana & Fort Smith Railroad Company and Walker D. Hines, Director General of Railroads, and G. C. Weddell, as fully as the same now appears on file in my office at Beaumont.

To certify which, witness my official hand and the seal of said court at Beaumont, in said District this the 5th day of April, A. D. 1920.

(Seal)

J. R. Blades,  
Clerk U. S. District Court, E. D. T.

United States of America, Eastern District of Texas.

I, W. L. Estes, United States District Judge for the Eastern District of Texas, do hereby certify that J. R. Blades whose genuine signature appears signed to the foregoing certificate was, at the time of signing same, and is now, Clerk of the District Court of the United States for the Eastern District of Texas and that his official acts as such are entitled to full faith and credit.

I further certify that said alteration is in due form.

Given under my hand at Beaumont Texas, this 5th day of April, A. D. 1920.

(Signed)

W. L. Estes,  
U. S. District Judge for the E. D. T.

United States District Court Eastern District of Texas.

I, J. R. Blades, Clerk of the District Court of the United States for the Eastern District of Texas do hereby certify, that the Honorable W. L. Estes whose name appears signed to the foregoing certificate, was at the time of signing same, and is now, the Judge of the United States District Court for the Eastern District of Texas, and that his said signature is genuine.

To certify which, witness my hand and seal of the said Court at Beaumont, Texas, this 5th day of April, A. D. 1920.

(Seal)

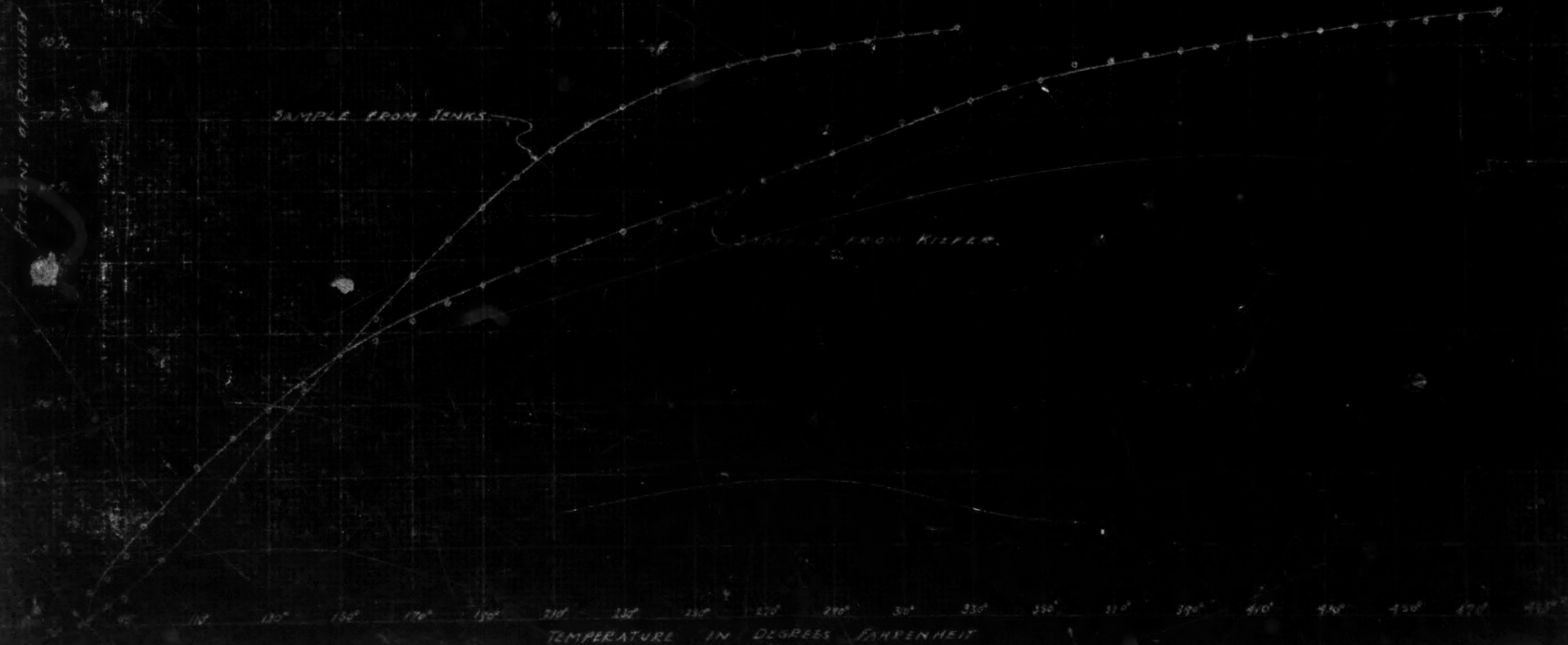
(Signed) J. R. Blades,  
Clerk U. S. District Court, Eastern District of Texas.

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Defendant's Exhibit 149.

266149

SAMPLES USED IN CAR TESTS  
AUTHORIZED BY THE HON. JUDGE WILLIAMS.  
APRIL 20, 1920







Sept 13 Ec 150  
Bulletin 151

Petroleum Technology 40

DEPARTMENT OF THE INTERIOR

FRANKLIN K. LANE, SECRETARY

BUREAU OF MINES

VAN. H. MANNING, DIRECTOR

# RECOVERY OF GASOLINE FROM NATURAL GAS BY COMPRESSION AND REFRIGERATION

BY

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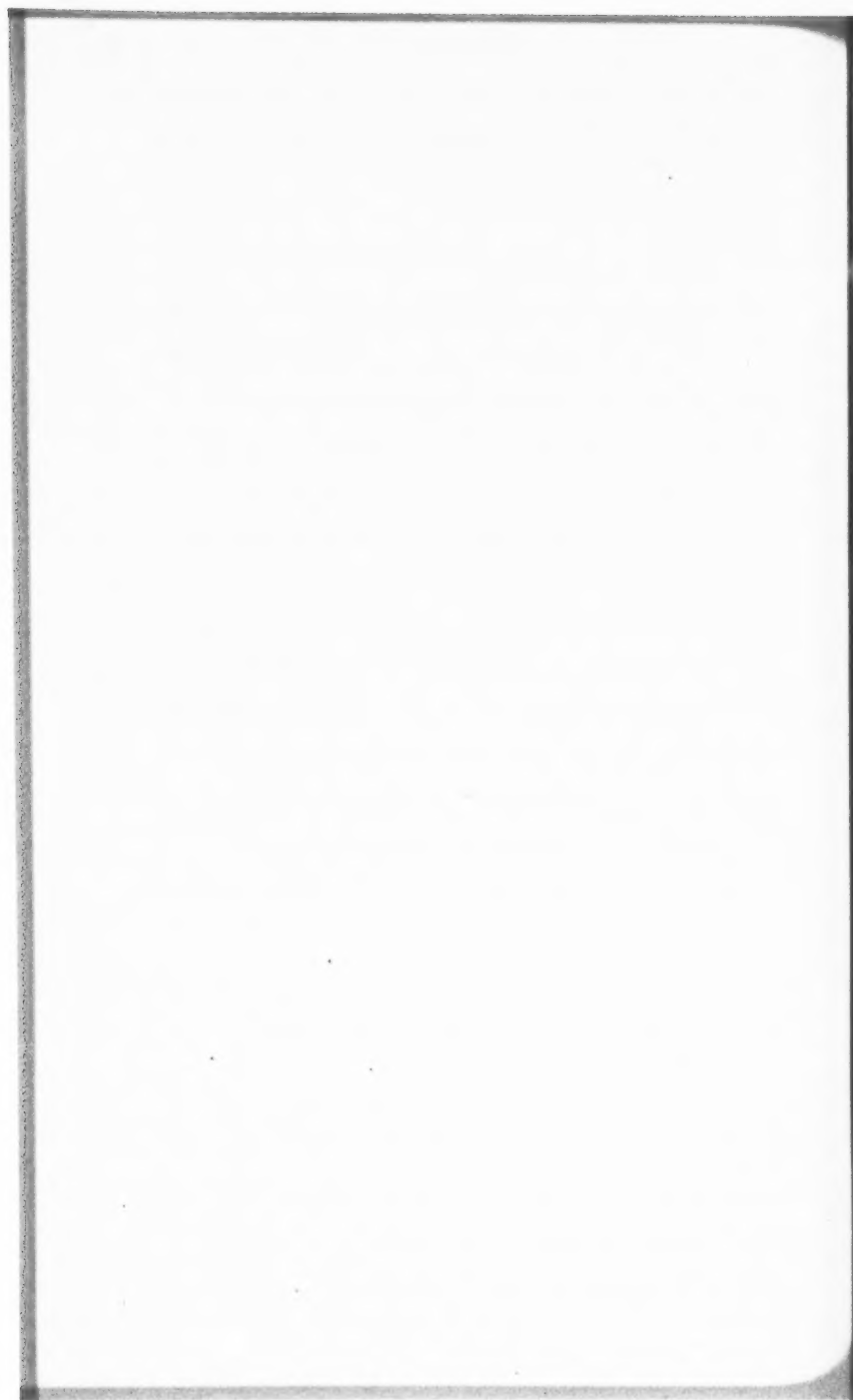
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## INTRODUCTION.

In investigating the general problems that relate to the petroleum industry in the United States, the Bureau of Mines has given considerable attention to the recovery of motor fuel from natural gas. Recent developments in gasoline power units and their increasing use have made it imperative that all fractions of petroleum suitable for fuel in this type of engine be conserved. The bureau has issued a number of publications on this subject. Among these are Technical Paper 10, "Liquefield products of natural gas, their properties and uses"; Bulletin 42, "The sampling and examination of mine gases and natural gas"; Technical Paper 87, "Methods of testing natural gas for gasoline content"; Bulletin 120, "Extraction of gasoline from natural gas by the absorption method"; and Bulletin 88, "The condensation of gasoline from natural gas."

This report treats of the compression and refrigeration process for the recovery of gasoline from natural gas from the viewpoint of the practical engineer and business man. Conditions of actual operation and the equipment in use are cited and described so that operators, and others interested, can compare the variations in methods of treating natural gas for its gasoline content in the different fields and also the conditions encountered and the features that control the methods used.

## ACKNOWLEDGMENTS.

The writer heartily acknowledges the valuable assistance and cooperation of the many plant operators and gasoline producers who have cheerfully furnished data on their plants and granted the privilege of plant inspection.

Particular thanks are due to Messrs. W. R. Hamilton, G. L. Goodwin, and D. L. Newton for the many courtesies extended the writer and for much of the information regarding cooling by expanded gas as practiced in the California fields.

Thanks are also due Messrs. W. P. Donovan, Thomas Chestnut, J. C. Gillespie, A. W. Peake, and R. E. Downing for valuable information on practices in the Mid-Continent fields.

## HISTORY OF THE INDUSTRY.

The early history of the manufacture of natural-gas gasoline has been published by the Bureau of Mines <sup>a</sup> in previous papers on the subject. The present practice is the result of the advance developed by a study of the needs of the industry, by improvements in machinery and equipment, and by a better understanding of the thermodynamic and other physical principles involved. A very small proportion of the plants erected have been commercial failures, and most of those which have failed lacked capital to carry them over a period of low prices for gasoline. Many of these plants are still operating the company having been reorganized or bought up by larger corporations, and under present market conditions they show satisfactory returns.

The following table shows the distribution of casing-head gasoline plants and the amount and value of the gasoline produced in the United States in 1915:

TABLE 1.—Gasoline recovered from natural gas and sold in 1915.<sup>a</sup>

State.	Number of plants.	Quantity.	Value.	Average recovery of gasoline per 1,000 cubic feet.
		Gallons.		Gallons.
Oklahoma.....	63	31,665,991	\$2,361,029	3.60
California.....	20	12,835,126	975,397	1.60
West Virginia.....	114	610,853,608	927,079	2.30
Pennsylvania.....	139	5,898,597	569,873	2.75
Ohio.....	50	2,198,715	167,138	2.80
Illinois.....	16	1,035,204	80,049	2.20
Texas.....	1			
New York.....	4			
Louisiana.....	2			
Kansas.....	2	877,424	70,258	1.33
Colorado.....	2			
Kentucky.....	1			
	414	65,364,665	5,150,823	2.57

<sup>a</sup> Northrop, J. D., Mineral Resources U. S. for 1915, U. S. Geol. Survey, 1916, p. 997.

<sup>b</sup> Includes gasoline resulting from natural condensation in gas mains.

In January, 1917, the number of plants in California had increased to 30, with an estimated daily production of more than 60,000 gallons, and the number of plants in Oklahoma to 95, with an estimated daily production of 200,000 gallons.

<sup>a</sup> Allen, I. C., and Burrell, G. A., Liquefied products from natural gas, their properties and uses: Tech. Paper 10, 1912, pp. 4-7; Burrell, G. A., The suitability of natural gas for making gasoline: Tech. Paper 57, 1913, p. 17; Burrell, G. A., Seibert, F. M., and Oberfell, G. G., The condensation of gasoline from natural gas: Bull. 88, 1915, pp. 9, 10; Burrell, G. A., Biddison, P. M., and Oberfell, G. G., Extraction of gasoline from natural gas by absorption methods: Bull. 120, 1917, pp. 11-14.

## **FACTORS TO BE CONSIDERED IN EXAMINING FIELD FROM WHICH GAS IS TO BE TAKEN.**

Before a compression plant can be properly designed to treat natural gas from any given area, a thorough study of the history of the field in general and especially of the sand from which the gas is to be taken should be made, also complete testing to determine the volume and gasoline content of the gas from the area under consideration should be made. This precaution is particularly necessary for a field in which there are no plants in operation that can be studied and used as a precedent.

A knowledge of the history of the field is important in determining the probable life of the wells and the decline in volume of gas produced from year to year. A plant built in California to treat 2,000,000 cubic feet per day has been able to get only half that amount because of the decline in gas production from the wells after the initial rock pressure was relieved, and new wells drilled for oil on the same lease have not thus far brought the quantity of gas up to the plant capacity. Gas from adjoining leases could not be obtained for treatment, and the plant at the time of the writer's visit was running at half capacity, as stated.

In all gas and oil fields in the United States it is found that as the pressure in the wells decreases the gas becomes richer in gasoline content. It is doubtful, however, if the actual total quantity of gasoline vapor from a given well increases, but it seems to be a fact that the amount of gasoline vapors produced declines much less rapidly than either the oil or gas production from a given well or area. This has been found to be practically true of West Virginia and California wells as long as the wells produce oil either under rock pressure or vacuum. In Pennsylvania a small compression plant is treating gas from wells that have long ceased to produce oil and are pumping salt water under vacuums of 26 inches of mercury.

New oil wells producing many million feet of gas under high rock pressure, such as are often brought in, in the Mid-Continent and California fields, are not considered, because gas produced under these conditions of pressure and volume practically never finds its way to compression plants. The gas produced under rock pressures of 400 to 1,500 pounds per square inch contains only comparatively small proportions of the heavier gasoline fractions and comparatively large quantities of the lighter or "wild" fractions, as would be expected from the condition under which the gas is held while in contact with the oil from which it must receive its charge of condensable vapors.

### **CHARACTER OF THE SAND.**

A knowledge of the sand from which the gas is to be produced is a valuable factor in designing a plant; the thickness, texture, or degree of cementation bear directly on the future of the field as a

gas and gasoline producer. Thick sand of close texture indicates long life as an oil producer, and consequently a long life for gasoline production. Loose, uncemented sands, such as are found in California, will not withstand the suction of vacuum pumps, which causes the sand to come in and stop or injure the pumps. This inflow of sand reduces the production of oil and increases the expense of cleaning the wells, so that companies treating their own gas do not permit the vacuums held on walls to exceed 1 to 2 inches of mercury at the casing head. This limitation of vacuums may react in such a way as to make compression plants unprofitable when the oil production has become small and the rock pressure has been completely relieved.

#### CHARACTER OF THE OIL.

Casing-head gas produced with high-gravity oil is almost universally rich in gasoline vapors, except when the gas is produced under extremely high pressures. However, the fact that an oil is of low gravity can not always be depended on to indicate small gasoline content, as has been shown by compression practice in California. As a rule, in California, casing-head gas produced with oil having a gravity of less than 22° B. does not yield enough gasoline for profitable compression. However, in the Salt Lake field, the oil has a gravity of 15° to 17° B. and still the casing-head gas is commercially valuable for its gasoline content. Analyses by the Bureau of Mines<sup>a</sup> of oil from this field shows that it carries exceptionally high proportions of asphaltum (55.3 per cent), but also carries lighter products, ranging up to fractions distilling over at 150° to 200° C., to which are due the gasoline vapors in the gas. The Kern River field, yielding oil with an average gravity of 14° B. has not, so far, produced any gas that is being treated for gasoline.

#### WATER SUPPLY.

Water being essential in all plants making gasoline by compression methods, the supply and the quality of water available should be carefully determined. The cooling coils and the compressor jackets of a plant treating 1,000,000 cubic feet of gas daily at a pressure of 250 pounds per square inch will use 100 to 300 barrels of water a day, depending on the design of the water-cooling system and the temperatures obtained. The loss is accounted for by the evaporation and, in plants where towers or sprays over ponds are used, by water being carried away by the wind. In the oil fields much of the water is so heavily charged with mineral salts as to be almost useless for boilers, gas-engine jackets, and compressor jackets. Such water to be made fit for boiler use must be treated with a so-called "boiler

<sup>a</sup> Allen, I. C., Crossfield, A. S., Jacobs, W. A., and Matthews, R. R., Physical and chemical properties of the petroleum of California: Tech. Paper 74, Bureau of Mines, 1914, p. 13.

compound." For cooling jackets of machines the water must be condensed, otherwise it forms a scale, which interrupts the circulation of water and is dangerous both to machinery and to the operators, and also cuts down the efficiency of the engine and compressor by permitting overheating of the cylinders and of the gas being treated.

#### TRANSPORTATION FACILITIES.

The matter of transportation is of importance, as on it depends, in part, the questions of blending, size and weight of units, plant location, and length of pipe lines. Before a plant is designed, the most economical product should be determined, as it may be that producing the maximum quantity of condensate possible from a given gas will be as profitable as a smaller quantity of a less volatile product. Producing the maximum quantity of condensate from a gas requires high pressures and blending with naphtha as soon as possible after the condensate is precipitated. This requires machines to produce the high pressure, which adds to the cost of installation, and a continual supply of naphtha for blending. If the cost of freight on the naphtha coming to the plant and on the percentage of naphtha in the blended product going back to market, plus the cost of mixing and of losses in blending and handling, is greater than the value of the condensate produced in excess of the quantity that could be produced at a lower pressure without blending, it would be more profitable to produce less condensate of lower vapor tension capable of being shipped as made. For example, a plant in the Mid-Continent field, situated an excessive distance from the nearest refinery from which it could obtain naphtha for blending, finds that using a pressure of 80 pounds from single-stage compressors, and producing 1.8 gallons of condensate with a gravity of 75° to 80° B. and a vapor tension of 5 to 6 pounds, is more profitable than producing 3 gallons of condensate having a gravity of 94° to 98° B. and blending it at or near the plant.

The distance from a railroad will also have a bearing on the cost of erecting a plant. Pipe lines are usually built from the plant to loading racks or blending stations on the railroad. More recent practice seems to favor blending at the compression plant, which necessitates pumping the naphtha to the plant and pumping the blended product back to the loading station through pipe lines. The greatest expense from being at a distance from a railroad, however, is that of hauling equipment and repairs. Machines built in parts too large to handle on the wagons or trucks usually found in oil fields are much more expensive to place than machines shipped in smaller parts. Roads, distances, and the weights of large parts of machines should be considered when a plant is being designed or an estimate of cost figured.

Plate I, A (p. 24), shows two single castings weighing 31,000 pounds each, which were placed in a plant that could be reached only by narrow, steep roads. The trouble and expense of hauling such parts is a factor in plant construction.

The general topography at one compression plant is shown in Plate II, A (p. 24).

#### DISTRIBUTION OF WELLS.

If the wells from which gas is to be taken are distributed over a wide area, it is well to consider the construction of two or more smaller plants rather than one larger plant. One plant visited by the writer treats gas collected over an area of approximately 32 square miles. The extensive pipe-line system required to bring the gas to the plant and return it to the various leases, with the booster stations and equipment necessary to maintain them, makes this plant, in the opinion of the management, more expensive and less efficient than two or three smaller plants would have been.

#### CONDITION OF WELLS.

Before erecting a compression plant in an old field the condition of the casings in the wells from which gas is to be taken should be ascertained. In an old field in Pennsylvania it was found that the casings were badly rusted and allowed excessive quantities of air to enter the lines as soon as a vacuum of more than 1 or 2 inches was placed on them. The wells made an average production of only 1,000 cubic feet of gas a day, so that the expense of recasing would not seem to be warranted.

J. O. Lewis, petroleum technologist of the Bureau of Mines, states that air is often admitted to wells in which the casing has not been properly placed, the air entering through porous strata from other wells which are not being held under vacuums.

#### TESTING NATURAL GAS.

The testing, measuring, and sampling of natural gas for its gasoline content has been described in Bureau of Mines publications<sup>a</sup> by G. A. Burrell and his associates, and will only be taken up briefly by the writer.

Many compression plants are successfully treating gas about which few facts were known before the plant was erected. Much time and expense could have been saved, however, if more had been learned of the physical and chemical characteristics of the gas before the plans

<sup>a</sup> Burrell, G. A., and Jones, G. W., Methods of testing natural gas for gasoline content: Tech. Paper 87, 1916, 23 pp. Burrell, G. A., Seibert, F. M., and Robertson, I. W.: Analysis of natural gas and illuminating gas by fractional distillation at low temperatures and pressures: Tech. Paper 104, 1915, 41 pp. Burrell, G. A., Seibert, F. M., and Oberfell, G. G., The condensation of gasoline from natural gas: Bull. 80, 1915, 106 pp.



of the plant were made and the machinery installed. The investment in a compression plant is large enough to warrant the expense of having all necessary tests, analyses, and measurements of gas made and checked before the plans and details of construction are taken up.

#### SPECIFIC GRAVITY TEST.

Natural gas having a specific gravity of 0.78 (air = 1) and higher is being successfully treated in compression plants. The specific gravity test is useful as an indicator, but the possibility of misleading variations through the presence of other gases, such as air, carbon dioxide, nitrogen and sulphur compounds, in the sample makes this test unreliable if used alone. If an analysis is made of the gas and the specific gravity of the hydrocarbon contents computed, the results are more dependable, but even then are not reliable enough to be used as a basis for final decisions regarding plant construction.

#### SOLUBILITY TEST.

The solubility test described by Burrell and Jones<sup>a</sup> is useful as an arbitrary test, because it is known that gases of a solubility of less than 30 per cent have not been successfully treated in compression plants.

In regard to the following table they state that "in all cases the yield represents the actual amount of gasoline sold after weathering."

*Yield of gasoline from casing-head natural gas by compression method, corresponding to absorption and specific-gravity tests.<sup>a</sup>*

Absorption by oil.	Specific gravity (air=1).	Yield of gasoline, gallons per 1,000 cubic feet of gas.	Absorption by oil.	Specific gravity (air=1).	Yield of gasoline, gallons per 1,000 cubic feet of gas.
<i>Per cent.</i>			<i>Per cent.</i>		
16	0.64	None.	50	1.20	3.00
23	0.83	1.00	48	1.37	3.50
30	0.90	1.75	44	1.38	3.50
37	1.00	2.00	65	1.38	4.00
39	1.03	2.50	54	1.41	5.00
38	1.07	3.00	86	1.46	5.00
54	1.21	3.50			

<sup>a</sup> Burrell, G. A., and Jones, G. W., work cited, p. 10.

It should be stated that both the specific-gravity test and the oil-absorption test fail when applied to residual gas from a gasoline plant because, although the results obtained will indicate high specific gravity and oil absorption, principally because of the presence of large percentages of the hydrocarbon gases, ethane and propane, yet the plant will have extracted the vapors of the liquid paraffins that constitute gasoline.

<sup>a</sup> Burrell, G. A., and Jones, G. W., *Methods of testing natural gas for gasoline content*: Tech. Paper 87, Bureau of Mines, 1916, pp. 7-10.

## FRACTIONAL DISTILLATION.

The Bureau of Mines<sup>a</sup> has developed a technical laboratory test based on a method of freezing out the propane and higher hydrocarbon fractions, which accurately determines the percentage of condensable hydrocarbons, including propane and all other higher members of the hydrocarbon series. This test can be made only in a well-equipped laboratory by experienced gas analysts.

Another method, based on the principle of low temperatures, that was originated by the Smith Emery Co., of Los Angeles, Cal., is essentially as follows: Gas from the casing-head of the well is led through a service meter (see fig. 1) under a pressure of 12 inches of water (devised so as to blow out if that pressure is exceeded) to a copper tube three-fourths of an inch in diameter and 15 feet long, coiled so as to fit into an asbestos insulated container 18 inches deep and 12 inches square. The container is filled with acetone (product of wood distillation) to within 2 or 3 inches of the top. Carbon dioxide snow from steel bottles of carbon dioxide in the liquid state is added to the acetone until a saturated solution is obtained. Complete saturation of the solution is shown when a portion of the snow remains, as snow, on the bottom of the container. The temperature of the acetone is held constant at 70° F. below zero by the carbon dioxide used in this way. Gas is passed through the copper coil, submerged in the acetone bath, until 500 or 1,000 cubic feet, as shown by the meter, has been treated; the coil is then drained into a flask, the quantity of condensate measured, and the gravity tested. If the condensate obtained in this manner is higher in gravity and vapor tension than would be desirable as a plant product, the condensate can be weathered down to the desired product, thus indicating the quantity of condensate of desired gravity which the gas contains. One series of tests made in this manner produced a condensate having a gravity of 90° B., and an absorption plant treating the gas reports a production approximately equal to the results obtained in the original tests of the gas. It requires 2 or 3 bottles of carbon dioxide to conduct this method of testing for one day, and the gas from 6 to 10 wells can be tested in that length of time.

## PORTABLE COMPRESSOR TEST.

It has become the practice, in testing natural gas for its gasoline content to determine its suitability for use in a compression plant, to make actual physical tests with a small portable plant consisting of a compressor, meter, and cooling coils mounted on a wagon or

<sup>a</sup> Burrell, G. A., Seibert, F. M., and Robertson, I. W., Analysis of natural gas and illuminating gas by fractional distillation in a vacuum at low temperatures and pressures: Tech. Paper 104, Bureau of Mines, 1915, 41 pp.

truck. Each well is tested by moving the compressor outfit to a point where gas can be taken from the casing head or from the gas line leading from the well.

The reason for testing each well separately is that even in the same field gas from different wells has widely varying contents of gasoline vapor, and if comparatively dry gas is mixed with gas of greater vapor content, the yield of condensate will be decreased or greater pressure and a lower temperature will be required to precipitate an equal quantity. This point was proved in practice by a plant in California, which, by turning out of its lines the gas from a well making about one-half million cubic feet per day, increased the plant production, no change being made in the pressure or the cooling system.

A portable testing outfit observed in operation by the writer consisted of a tank 12 by 36 inches used as a gas receiver, a 4-horsepower gas engine belted to a 3 by 3½ inch single-acting compressor with a capacity of 3 cubic feet per minute, a single coil of 1-inch pipe of the continuous, return-bend type cooled by submerging in a wooden trough of water and ice, and a double coil, 12 feet long, of 1-inch pipe inside a 2-inch pipe, cooled by expanding the compressed gas through a valve connection between the outside and inside pipes.

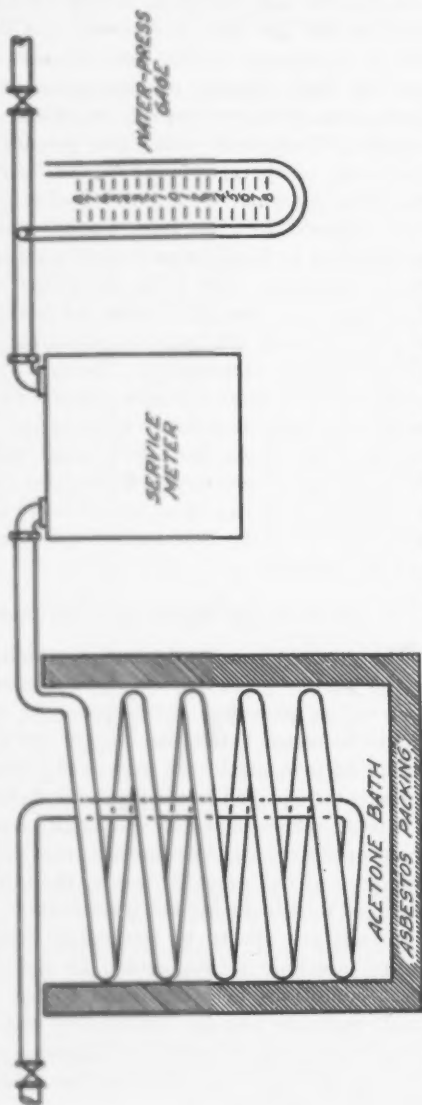


FIGURE 1.—Apparatus for testing natural gas by the acetone and carbon-dioxide method.

The gas was brought from the well line through a  $\frac{1}{2}$ -inch pipe fitted with a water gage for regulating the pressure on the intake receiver; this receiver also served as a trap for heavy oil and dirt. From the receiver the gas was compressed and delivered to the water-cooled coil at a pressure of 250 pounds, the water being cooled with ice. Ice was used because it gave lower and easily regulated temperatures, was more convenient to obtain than a large or continuous supply of fresh cold water, and permitted tests to be run at nearly the same temperature and under more uniform conditions. The gas from the water-cooled coil discharged into the chamber between the outer and the inner pipe of the double coil. At the discharge end of the outer or 2-inch pipe was suspended a 1-inch drip pipe to collect the condensate. Gas from the 2-inch pipe was expanded through the valve into the inner pipe to refrigerate the high-pressure gas flowing through the outside pipe and discharged through a service meter to the atmosphere. Records were kept of temperatures, pressures, and amounts and gravity of condensate produced. The tests were made at night to aid cooling. From time to time specific-gravity tests of gas from individual wells were made and recorded. When the gas from any well dropped noticeably in gravity, a compression test was run on it, and, if found too low in gasoline content for profitable recovery, was turned into the fuel lines of the lease and was not treated.

#### SOURCES OF ERROR IN PORTABLE COMPRESSOR TESTS.

The greatest source of error in making tests with portable outfits is the meters. Service or domestic meters become inaccurate if operated at pressures above those for which they were made, and should be tested before use even at normal pressures, and during use should be protected from excessive pressures by a water or mercury pressure gage placed on the pipe ahead of the meter intake. Pressures of 8 to 12 inches of water are usually used with meters of this type. Some operators use two meters, one on the intake and one on the discharge of the portable tester, the indicated amounts of gas being averaged in calculating the production.

Results are apt to be misleading when gas being treated in the testing machine is not cooled to the same temperature as under plant conditions or compressed to the pressure used in the plant. Small portable testing compressors can be adjusted and operated under conditions so nearly simulating actual plant conditions as to give reliable data on which to base estimates of pressures, temperatures, and recovery.

## MEASURING THE FLOW OF NATURAL GAS.

The following description of the orifice-meter method of gas measurement is from Technical Paper 87<sup>a</sup> of the Bureau of Mines:

## ORIFICE METER.

An instrument known as the orifice meter, for testing small flows of natural gas, is shown in figure 2. This instrument is simple in construction, consisting of a short 2-inch nipple, *b*, with pipe thread on one end and a thin plate disk on the other. The disk carried a 1-inch orifice, *a*, and a hose connection, *c*, for taking the pressure. The meter is especially intended for testing small gas wells and "casing-head" gas from oil wells. As a rule the flow of gas from an oil well is rather small, and it is not advisable to test the flow with a Pitot tube such as is used in testing large gas wells. In using the orifice tester it is necessary to know the specific gravity of the gas in order to obtain the flow.

Before the orifice well tester is attached to the casing head the well should be permitted to blow into the atmosphere until the head of the gas is reduced and the flow has become normal. Then the tester is attached by simply screwing it into the end of a 3-foot length of 2-inch pipe and the pressure is read in inches of water on the siphon gage, *d*. In the table<sup>b</sup> the flow of the well, with values for gas of different gravities, is opposite the gage reading. The orifice in the instrument should be kept dry and uninjured; otherwise the gage reading will not be correct.

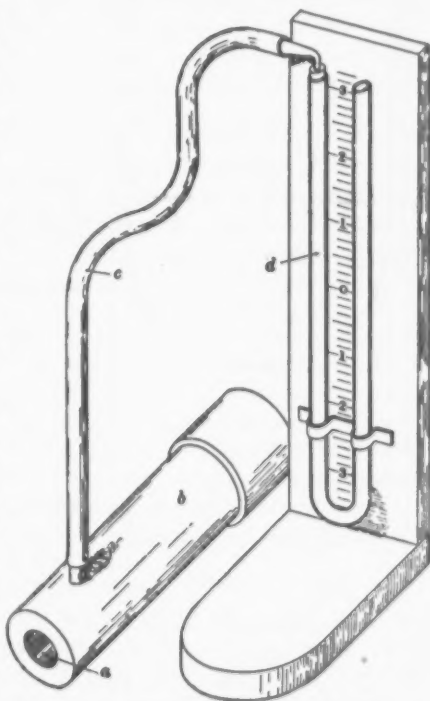


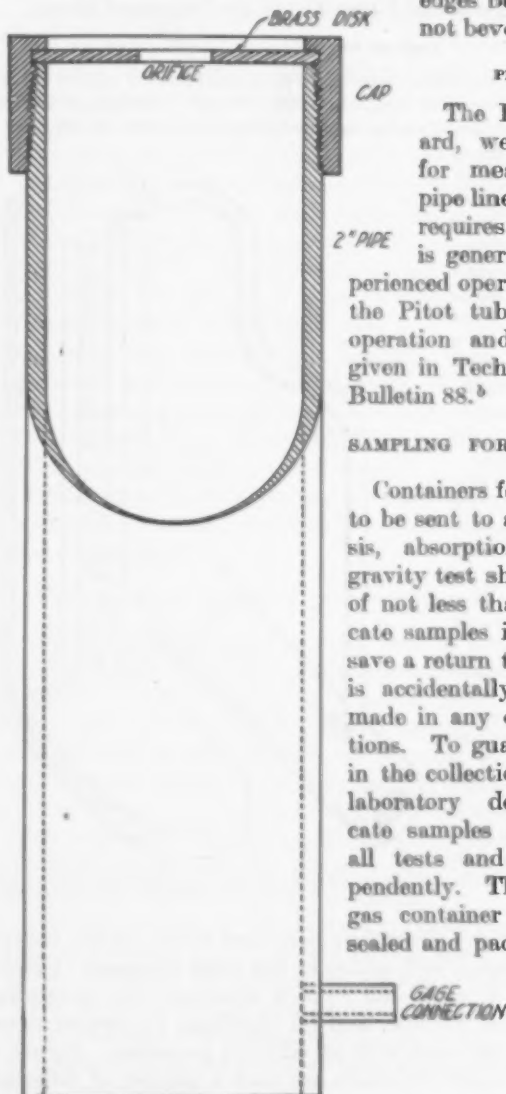
FIGURE 2.—Orifice meter for testing small flows of natural gas.

Beside the thin 1-inch orifice plate described above, orifice meters of this type are equipped with plates of the same thickness ( $\frac{1}{8}$  inch) and with orifices of  $\frac{3}{8}$ ,  $\frac{1}{2}$ ,  $\frac{3}{4}$ , and  $1\frac{1}{4}$  inch diameters for measuring flows of greater or less volume, and for checking, by two or more tests, the flow from the same well at different pressures. Figure 3 shows the design of meters in which are used a number of different sized orifice plates. The brass disks containing the orifices are carefully machined to a thickness of  $\frac{1}{8}$  inch and are made to fit perfectly

<sup>a</sup> Burrell, G. A., and Jones, G. W., Methods of testing natural gas for gasoline content: Bureau of Mines, 1916, pp. 18-20.

<sup>b</sup> See Table 15, p. 115.

between the cap which holds the disk in place and the end of the 2-inch pipe. The orifice in the disk is accurately drilled to size, the edges being made square and not beveled.



#### PITOT-TUBE METHOD.

The Pitot tube is a standard, well-known instrument for measuring gas flows in pipe lines and at gas wells; it requires careful attention and is generally used only by experienced operators. Descriptions of the Pitot tube and its method of operation and tables of flow are given in Technical Paper 87<sup>a</sup> and Bulletin 88.<sup>b</sup>

#### SAMPLING FOR LABORATORY TESTS.

Containers for natural-gas samples to be sent to a laboratory for analysis, absorption test, and specific gravity test should have a capacity of not less than 1 pint, and duplicate samples in two containers may save a return to the field if a sample is accidentally lost or an error is made in any one of the determinations. To guard against errors both in the collection of samples and in laboratory determinations, duplicate samples are often taken and all tests and analyses run independently. The bottle or other gas container should be carefully sealed and packed to avoid leakage from poor stoppers and expansion and contraction of the gas from wide changes in temperature.

FIGURE 3.—Orifice meter in which different sized orifice plates may be used.

<sup>a</sup> Burrell, G. A., and Jones, G. W., Methods of testing natural gas for gasoline content: Bureau of Mines, 1916, pp. 21-34.

<sup>b</sup> Burrell, G. A., Seibert, F. M., and Oberfell, T. G., The condensation of gasoline from natural gas: Bureau of Mines, 1915, pp. 27-46.

## COLLECTING A SAMPLE BY AIR DISPLACEMENT.

Filling a bottle or other container by air displacement is a rapid and convenient method, often used in the field. A small hose is placed over a pet cock in the gas line, the other end being inserted inside of the container. A gentle stream of gas is then allowed to flow into the container for four or five minutes, displacing the air. If the gas is known to be lighter than air it is best to invert the bottle, thus allowing the light gas to displace the heavier air; if the gas is heavier than air, the reverse method is preferable. The bottle is then quickly corked, and sealed by covering the stopper with a coating of warm paraffin. The difficulty with this method is the uncertainty whether all of the air has been displaced by the gas.

## COLLECTING A SAMPLE BY WATER OR MERCURY DISPLACEMENT.

A more accurate method of obtaining a gas sample is by the displacement of water. In this method the bottle is filled with water and inverted beneath the surface of water in a bucket or other convenient receptacle, the hose from the gas line is allowed to discharge below the mouth of the inverted bottle until the water in it has been entirely displaced by the gas. The bottle is then closed or corked while still beneath the surface, and after drying and sealing with paraffin, can be transported without danger of contamination of the contents.

Mercury may be used in the same manner as water, but requires that considerable volumes of this liquid be kept with the sampling apparatus, which adds to its bulk and weight. Displacement of mercury is, however, the most accurate method of filling a container with the gas to be tested, and insures the least possible contamination.

## SAMPLING AND TESTING IN GENERAL.

All tests, measurements, and determinations of natural gas to be used for gasoline manufacture should be checked and proved. Duplicate tests, analyses, and measurements should be made by different persons, if possible. If the duplicate results show variations large enough to be of importance in determining plant capacity, methods, or equipment, a third test should be carried out to determine which results can be trusted and can be used in plant design. Too much importance can not be placed on accurate testing and measuring of gas to be treated for gasoline content, for although during the treatment in a commercial plant many problems arise that can not be foretold, many characteristics of the gas can be determined which have a direct bearing on the pressures and temperatures necessary and the gravity and vapor tension of the condensates produced.



### METHODS OF NATURAL-GAS GASOLINE MANUFACTURE.

Plants treating natural gas for its gasoline content fall under one of three mechanical and physical subdivisions—compression, refrigeration, and absorption, or a combination of these methods. Each division varies widely in mechanical details of both equipment and operation. Gasoline recovery by compression and refrigeration will be discussed in the following pages. Recovery by absorption methods has been described in Bulletin 120.<sup>a</sup>

#### THEORY OF PRECIPITATION.

##### CONDENSATION BY COOLING.

The theory of the precipitation of vapors from natural gas is in a way comparable to that of the precipitation of water vapor from the atmosphere. Water vapor is known to exist in the air at all times in varying proportions, but is invisible unless condensed by cooling. Cooling to a temperature below that at which the air is saturated with the water vapor, it contains causes precipitation in the form of snow, hail, frost, rain, fog, or dew. This fact is also illustrated by beads of water collecting on the outside of a pitcher of ice water, and by the formation of frost on the refrigeration pipes of expansion units, as shown in Plates V, C, VI, and VII (pp. 34 and 36). The air coming in contact with the cold surface of the pitcher or pipes is cooled below its dew point and the moisture which it can no longer hold as vapor condenses as water or frost on the surface. By further cooling of the air more moisture would be condensed, and if cooling were carried far enough practically all of the water vapor could be precipitated without the aid of pressures higher than atmospheric.

##### CONDENSATION BY COMPRESSION.

In plants compressing air it is found that air, after having been made more dense by increase of the pressure and decrease of the volume, deposits moisture at atmospheric temperature, and as the pressure is increased larger percentages of the contained water vapor are precipitated. Hence either high pressures or low temperatures increase the condensation of the water vapor.

In the exceedingly dry atmosphere of the Arizona and Nevada deserts, operating air compressors at a pressure of 100 pounds and cooling the compressed air only to atmospheric temperature always causes precipitation of water, and of lubricating oils from the cylinders, in the air receiver. That all of the moisture in the air is not deposited in the receiver is shown by the fact that in pumps driven by compressed air some moisture freezes in the cylinders and also forms frost on the exhaust outlet.

<sup>a</sup> Burrell, G. A., Biddison, P. M., and Oberfell, G. G., Extraction of gasoline from natural gas by absorption methods: Bull. 120, Bureau of Mines, 1917, 71 pp.

The condensable fractions in natural gas, like those in air, are not visible under ordinary conditions, but at times the sudden release into the atmosphere of gas from confinement under pressure will cause vapors of hydrocarbons to form a mist resembling fog or steam.

In the treatment of natural gas for gasoline recovery the result desired could be accomplished either by compression or refrigeration, but the complex mixture of gases and vapors complicates the problem. Without an exact knowledge of the various members and the proportion of each to the whole, an attempt to calculate the most suitable pressures and temperatures becomes little better than a guess, and the most practical solution is by tests and experiments. According to the law of partial pressures,<sup>a</sup> if gas contains 10 per cent of condensable vapor and is under a pressure of 200 pounds, the condensable 10 per cent has acting upon it a partial pressure of 20 pounds, or 10 per cent of the total pressure. As the proportion of different condensable vapors in the gas becomes smaller through their partial condensation, the partial pressure acting on them also becomes less. The percentage of the gage pressure acting on any one of the gas or vapor constituents varies in proportion to the percentage of volume occupied by that constituent. If the constituent is condensable, condensation will lower its proportion to the volume of uncondensed gas to a point at which the partial pressure acting on it is too small to cause further condensation, leaving a portion of the vapor uncondensed throughout the entire treatment. As the acting pressure becomes lower, condensation tends to cease, but lowering the temperature will cause further condensation. Under constant gage pressures and decreasing temperatures, the largest percentage of the heavier hydrocarbons contained in the gas is recovered, and the losses are confined to the lighter members.

Although all of the condensable vapor and even the true gases can be liquefied by increasing the pressure or reducing the temperature sufficiently, the application of these processes in treating natural gas for gasoline is limited by the commercial considerations. Extremes of either pressure or temperature would yield condensates too volatile for commercial use, also the machinery and other equipment required would be expensive to install and difficult to operate and maintain.

To recover the valuable hydrocarbon fractions that are held as vapors in natural gas, only such pressures and temperatures are necessary as can be obtained by the use of machines and fittings of standard construction and capacities. As the power used to compress the gas heats it, developing power by expanding the compressed gas cools it. By using the cooled gas as a refrigerant, the

<sup>a</sup> Locke, C. E., *Engineering thermodynamics*, 1912, p. 481.

temperature necessary, in conjunction with the pressures obtained, to extract the maximum of commercial condensate can be developed.

The temperature and the pressure that will yield the most profitable results are those that together will recover the largest possible amount of condensates of low vapor tensions and as much of the lighter parts as can be so blended or handled as to conform with legal standards of safety and make a good motor fuel

#### **ABSORPTION THEORY.**

The absorption process for recovering condensate from natural gas is based on an entirely different physical property, that of the solubility of vapors in liquids. In this process the gas is brought into intimate contact with a liquid which dissolves or absorbs the vapors; these vapors are later distilled from the absorbing medium and condensed.

#### **USE OF COMBINATION COMPRESSION AND REFRIGERATION PROCESS.**

As shown above, the fundamental principles of the compression process are compression and cooling of the natural gas to pressures and temperatures at which certain hydrocarbons condense.

Plants of this character are erected to treat casing-head gas from oil sands or from sands closely associated with oil, the gas being brought to the surface either between the casing and tubing of an oil well or with the oil in the tubing. The quantity of gas from each well is usually comparatively small and in some installations as many as 500 or 600 wells are connected with one compression plant of not more than the average capacity.

The dry (treated) gas is, at most plants, used on the oil leases to drive the gas engines of the compression plant, and also for gas and steam engines in pumping and drilling wells. A few compression plants sell the treated gas for commercial use in cities or for manufacturing purposes. The cost of pipe lines and equipment necessary to deliver the small quantities of gas to market would, in general, be excessive. There is seldom much gas left after the quantity necessary for furnishing power has been used.

The value of the gas for heating, power, and lighting is not impaired appreciably by removing the gasoline content. If this gas were not treated, the gasoline would, at most leases, be burned with the gas used for power purposes and practically be wasted as far as serving any useful purpose is concerned.

#### **GAS LEASES.**

Until 1914 practically all the gas being treated for its gasoline content was sold or leased under varying conditions to gasoline producing and marketing companies independent of the companies pro-

ducing the oil. Since that time the oil producing companies, realizing the profits to be made, have constructed compression plants to treat the gas produced with the oil on their leases, and in many instances are now purchasers or lessors of gas from surrounding properties.

Before 1914 gas leases were made mostly on a flat rate, which varied from 2 to 5 cents per 1,000 cubic feet. Often the contract stipulated the vacuum to be held on the oil wells, and specified that any treated gas not used to run the compression plant was to be returned to the lease from which it was taken, the return gas lines to be paid for and laid by the purchasing party. Other leases required that a certain percentage of the gas delivered to the compression plant should be returned, this figure in some instances being as high as 80 per cent.

#### SLIDING-SCALE LEASE.

One lease in Pennsylvania required that 7 cents per 1,000 cubic feet of gas be paid the lessor when the price received by the lessee for gasoline in tank car lots during the preceding month averaged 10 cents per gallon or less, and an advance of 1 cent per 1,000 cubic feet for each advance of 2 cents in the monthly average price of gasoline. The gasoline company had made arrangements to sell the treated gas at 12 cents per 1,000 feet to a company which supplies gas to near-by towns. This was one of the few plants found by the writer that made such disposal of the dry gas.

Such a form of contract, known as the sliding-scale lease, is being used almost entirely at present in the Mid-Continent fields, except that usually the contract stipulates that gas after treatment shall be returned to the lease from which it was originally taken. It also provides that all gas necessary for power to operate gas and water pumps as well as the compressor plant, shall be taken from the treated-gas lines at no cost to the lessor.

At the present time (December, 1916) leases in Oklahoma are being made on what is known as the 4-10 or the 5-10 basis, meaning that the price paid for the privilege of removing and selling the gasoline from the gas is to be 4 cents or 5 cents per 1,000 cubic feet when the price received for the product is 10 cents per gallon, with an increase of 1 cent per 1,000 feet of gas for each additional 2 cents per gallon, as in the Pennsylvania lease previously mentioned. On the 4-10 scale, with gasoline selling at 18 cents per gallon f. o. b. the plant, the price paid for gas would be 8 cents per 1,000 feet.

#### WEAK POINTS OF LEASE.

There seems to be two very weak points in such a form of contract; one is that no account is taken of the present or future quan-

tity of condensate in the gas, and the other is that as the wells and field grow older the percentage of gas returned to the original owner will become progressively less and eventually will become nil. In the Glenn pool, Oklahoma, this point has been reached at some plants.

In one plant, to the knowledge of the writer, the volume of treated gas discharged is at times insufficient to furnish fuel for the engines running the pumps and compressors. This condition is quite usual in older districts such as Sistersville, W. Va., where dry gas is bought to operate the compression plants, or, as at one plant, electric power is purchased and is used to drive the compressors.

As the quantity of gas decreases, the owner will receive less for the gas and have less treated gas returned to him, being forced eventually to buy gas for lease power while the plant operator will, for a long time at least, make the same or a slightly decreased quantity of marketable condensate. It would seem that these conditions should be taken into account in the gas contract.

#### ROYALTY LEASES.

Royalty leases are made and held in some fields, particularly in California, but do not seem to have been generally used throughout the United States.

Before the compression process and its results became well known and understood, gas could commonly be obtained on a royalty of one-eighth of the value of the product marketed, but as the gas producers learned of the treatment and profits, royalties have increased. In California, as much as one-third of the value of the product for gas containing less than 2 gallons of gasoline per 1,000 cubic feet is being paid. The writer is reliably informed of a contract in Oklahoma under which a royalty of one-half is being paid, the gas producing between 4 and 5 gallons of gasoline per 1,000 cubic feet.

#### FACTORS CONTROLLING ROYALTIES AND LEASES.

The royalties and prices that can be paid for gas under lease for gasoline recovery depend on the following conditions:

Wells scattered over a wide area will necessitate an expensive gathering system, including pipe lines and pumps or booster stations, and the cost of operation and upkeep. The quantity of condensate in the gas is vital because the cost of a plant and of plant operation is practically the same for rich or lean gas. If the gas is to be returned to the original owner for use on the lease, the cost, upkeep, and operation of the return or "dry gas" line are to be considered. The distance from a railroad station and the length of pipe lines required to bring the blending naphtha to the plant and transport the product to the station, also the distance from a market, and the source of naphtha supply will have a bearing on production and marketing costs.

The time the lease or contract is to run is also a factor which directly affects the price that is to be paid for gas, as the total cost of installation must be paid out of net receipts by the time the contract expires.

In general, all the factors entering into any manufacturing enterprise must be taken into consideration when the price to be paid for gas leases or royalties is being set.

### **METHODS OF COLLECTING NATURAL GAS.**

The term "casing-head gas," when strictly applied, means gas coming from an oil sand between the casing and the tubing through which the oil is pumped. This term, however, as used in connection with compression plants, has been broadened so as to apply to any gas rising with oil in the tubing, or from flow lines, and to vapors coming from oil in traps or flow tanks.

In eastern practice it is usual to collect only the gas coming up between the casing and tubing in wells which are usually held under high (20 to 26 inches of mercury) vacuums, no attempt being made to collect the gas coming up with the oil in the tubing or the light fractions given off in flow or storage tanks. Oklahoma operators collect gas at the casing head, and in some instances from flow lines and flow tanks. In California an entirely different practice has developed, because of the soft running oil sand in most California fields. The oil and gas from one or more pumping or flowing wells is led into a specially built tank, called a trap. Traps of different designs are so constructed and operated as to permit the separation of the oil and the gas at pressures either above or below atmospheric, as circumstances may require.

#### **USE OF TRAPS.**

Originally traps were invented and designed to work under pressure with the object in view of separating, collecting, and saving the gas and also the oil atomized and mechanically carried with the gas into pipe lines or into the atmosphere; also to hold in the oil the gasoline fractions that would otherwise be volatilized when the pressure on the oil was released; and, further, to allow the oil to absorb as much of the condensable fractions from the gas as possible, thus raising the gravity of the oil and in a measure saving the most desirable fractions of the crude product. As an instance of the use of a trap and its effect on the oil produced, F. B. Tough, of the Bureau of Mines, cites the use of one at a gusher in the Midway, California, field. This well when flowing through a trap produced oil having a gravity of 32.5° B., and when flowing uncontrolled under considerable rock pressure into a collecting sump produced oil, as collected in the sump, with a gravity of 26° B., a gain of over 6° B. resulting from the use of the trap.

Traps are of interest to the casing-head industry principally as separators of oil and gas, or, as developed and used by at least one company, for holding a vacuum on the oil to separate from it such fractions as will distill off at the normal temperature and under a vacuum of 5 to 15 inches of mercury, thus reversing the usual effect and method of trap operation.

#### TRAPS HELD UNDER VACUUMS.

This company has found that the crude oil during transportation and storage and in transfer to the stills of the refinery lost a part of the lighter fractions; also, the temperature used in cooling the still vapors permitted further losses of the lighter fractions, which could be collected as vapor and saved by treating in a compression plant with the gas and vapors produced at the wells.

The method adopted is to relieve the crude oil of its lighter gasoline fractions by holding a vacuum on the trap, as oil is sprayed or flows into it with the casing-head and tubing gases, and treating all the gas and vapors thus obtained in the compression plant. The condensate, which has a gravity of 86° B., is held under a pressure of 10 to 15 pounds and kept cool by shading or insulating the storage tanks until the product is blended with naphtha.

This company has three different production conditions to

meet in the use of traps as follows: (1) Shallow pumping wells which have little or no gas pressure, (2) deep pumping wells with varying pressures of gas, and (3) deep flowing wells which have more or less pressure

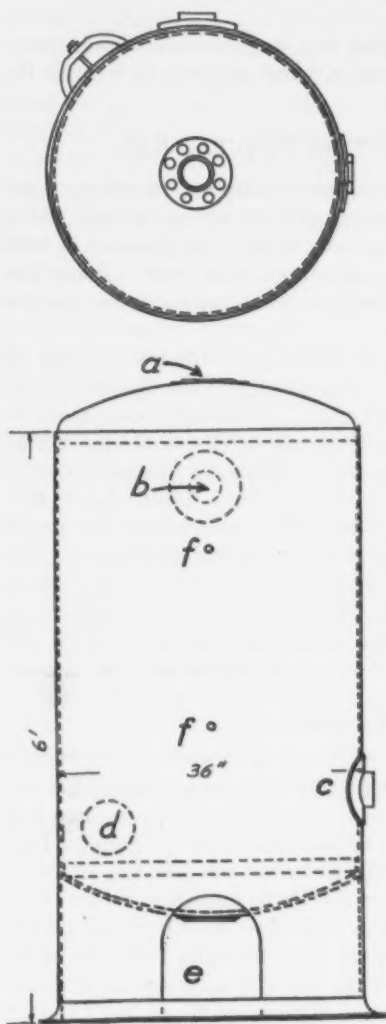


FIGURE 4.—Trap used with shallow pumping wells.  
a, gas outlet; b, gas and oil inlet; c, oil outlet;  
d, manhole; e, clean out; f, holes for gage glass.



on both gas and oil at all times and flow by head. Each condition is met by the use of traps of somewhat different design and operation.

Oil and gas from the shallow pumping wells is carried through flow lines, each controlled by a check valve, to a manifold, from which all the oil and gas goes through one line to a simple trap (fig. 4), the gas drawn out at the top at 5 to 15 inches vacuum to the scrubbers and vacuum pump, the oil being drawn off at a point near the trap bottom, to storage.

Production from deepwells flowing or pumping by "heads," which often builds up pressure in traps and lines by rushes of oil and gas too large for the normal capacity of simple traps and vacuum pumps, is handled by traps of special design, shown in figure 5. Two lines are laid from the well; one from the well tubing carries oil and gas pumped, or flowing together, the other line carries gas from between the casing and tubing. These lines are joined a few feet back of the trap intake, thus forcing all the gas and the oil to flow together into the trap at a point near the top; the gas separates from the oil and flows out at the top of the trap to the vacuum pump. The oil flows out near the trap bottom through a Crane balanced globe valve. The stem of the valve is rigidly connected to a counterbalanced float tank, which rises as the oil in the trap becomes low, closing the valve; fills and pulls the valve open when the flow increases and the oil rises in the trap. The float tank is connected both to the top and the bottom of the trap, as shown in figure 5, by swinging

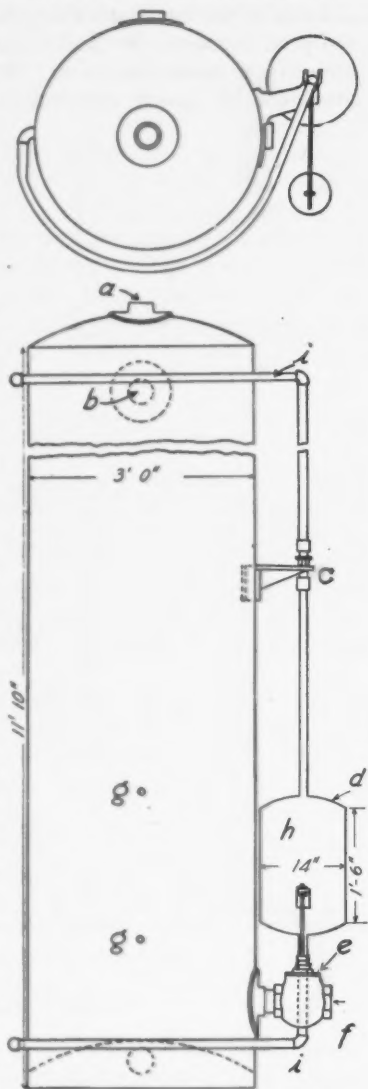


FIGURE 5.—Trap used on flow lines under pressure. *a*, gas outlet; *b*, gas and oil inlet; *c*, ball counter balance; *d*, float tank; *e*, 3-inch Crane balance globe valve; *f*, oil outlet; *g*, holes for gage glass; *h*, chamber; *i*, swinging pipe connections.

pipe connections. As the oil rises and falls in the trap oil flows in and out of the float tank through the bottom pipe connection. The top pipe connects the float tank and the top of the trap and acts only as a pressure equalizer. This trap is of standard design and is marketed by supply companies. The trap shown in figure 6 was

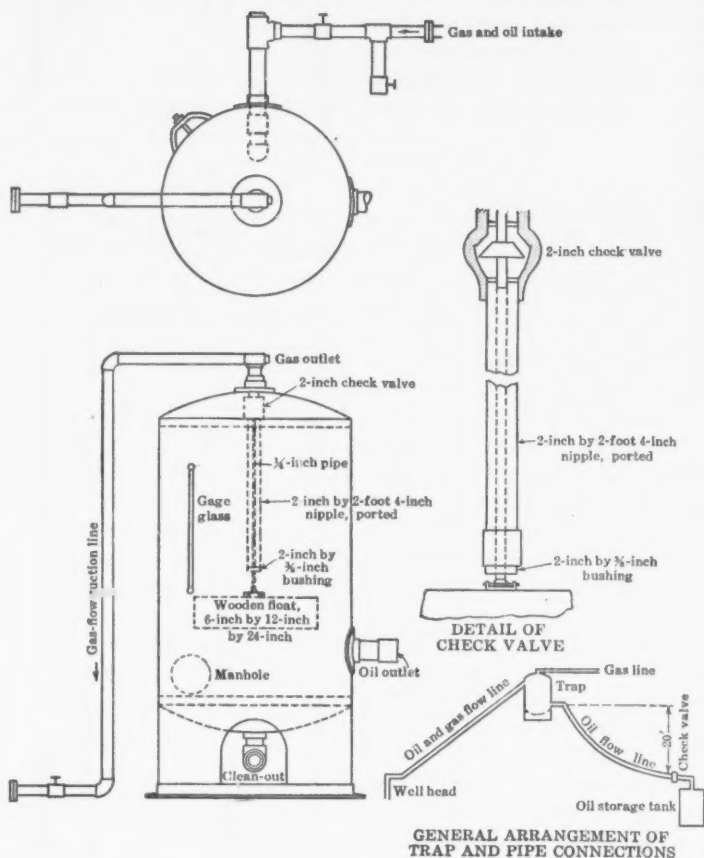


FIGURE 6.—Trap used with flowing wells.

designed by the company using this system of holding vacuums on traps. It is used, particularly with flowing wells, in much the same way as the trap shown in figure 5 and operates automatically.

When the oil level rises above a certain point the gas discharge shuts off entirely. This permits pressure to build up on both intake and discharge oil lines, causing a back pressure on the intake and a greater flow from the discharge; the trap thus clears itself and

returns to normal operation. It is set, as shown in figure 6, above both the well head and the storage tanks, so that when the oil and gas flow is small and a vacuum is built up in the trap the 20-foot drop and the horizontal check valve in the discharge line keep the oil from backing up into the trap, and permitting air to enter the trap and the gas lines.

As an example of loss of the light fractions of oil in storage, a 55,000-barrel storage tank filled with Cushing crude oil is reported by A. N. Kerr, of the Riverside Western Gasoline Co., to have lost by evaporation 9 inches, or 2.5 per cent of its total content, in one year. The loss, without doubt, consisted entirely of the light fractions that make up the gasoline content of the crude oil as it comes from the wells. Much of this loss might have been saved by using vacuum traps or by covering the tank and connecting it to the intake line of a compression plant.

#### FIELDS IN WHICH TRAPS ARE USED.

Traps are used more universally in the California fields than in other fields throughout the United States, because in California oil is sold on a gravity basis, making it desirable and profitable to retain as large a proportion of the light fractions as possible in the oil in order to keep the gravity at a maximum. The general practice, with the exception of the company using vacuum traps, previously mentioned, is to hold pressure on traps to save the light or gasoline fractions.

Plate I, *B*, shows a view of the Starke trap, designed and patented by Dr. Eric A. Starke, of the Standard Oil Co. of California, and used by that company.

Plate I, *C*, shows the McLaughlin compound trap, capacity 800 barrels of oil and 7,000,000 cubic feet of gas per day at 300 pounds pressure, patented by A. C. McLaughlin, of the Kern Trading & Oil Co., on the left, and the McLaughlin single-chamber trap, on the right. Plate III, *A* shows the cone chamber, McLaughlin trap.

Simple cylindrical traps used in the Fullerton field in conjunction with a casing-head gasoline plant are shown in Plate IV, *A*.

#### GATHERING LINES.

Gas from casing heads, tubing, traps, or flow tanks to be treated by compression is led through small (usually 2-inch) lines to a gas main that carries it directly to the plant or to a vacuum or pumping station.

At plants where the gas comes from near-by wells and the gathering lines are short, and it is not desirable to hold a high vacuum on the wells, the vacuum needed to carry the gas through the lines is

often developed in the low-pressure cylinder of the compression plant. By this method a vacuum pump is at many plants unnecessary, and the plant is simplified by requiring one less unit. From this condition the practice varies to plants at which gas is gathered from areas as large as 32 square miles, with 6 and 8 inch mains 7 to 10 miles long, and as many as 30 substations or gas pumps forcing gas through the pipe lines to the compression plant and holding the desired vacuum on the wells. In order to hold high vacuums on the wells from which gas is being drawn it is necessary to have the vacuum pump close to the wells, as it is impossible to maintain a minimum pressure through pipe lines of great length.

In designing a plant or plants to treat gas coming from a large area the number of plants, the number of vacuum and booster stations, the situation of the plant or plants, and the size and length of the pipe lines require careful mathematical calculations to determine the most economical installation. Many plants visited by the writer showed that little or no consideration had been given to these features. Such conditions may be due partly to the use of gas lines laid before the treatment of gas was considered and the reversal of the direction of flow in parts of such lines in order to bring the gas to the plant. The fall in pressure as the gas flows through the pipe lines and the increase in volume caused by the lowered pressure and the increased number of lead lines from wells as the gathering progresses toward the plant, make it essential to use pipes of progressively increasing diameter as the gas approaches the plant.

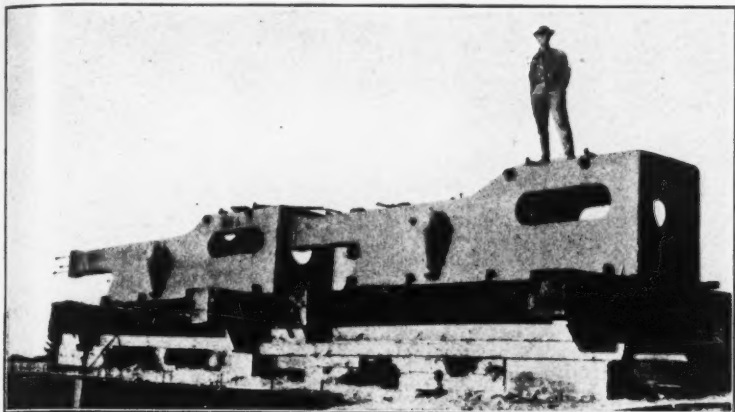
If vacuum pumps and booster stations are placed at points in the gathering lines to reduce the volume and increase the pressure of the gas, the lines leading from such plants may be smaller than those transmitting the gas under lower pressures.

In practice the sizes of gas mains have been determined usually by rule of thumb and bear little relation to the actual volumes, gravities, and pressures of the gas.

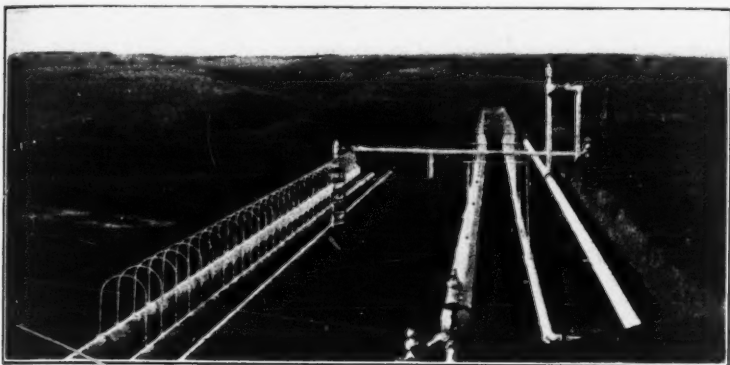
#### FLOW OF GAS IN PIPE LINES.

In designing gathering systems of compression plants to treat or pump gas, the determination of the proper size of pipe to use in lines for carrying a given quantity of gas at known pressures is so essential that the writer believes the formulas covering these points will be of value and interest to those engaged in compressing gas. Formulas and tables on the flow of gas in pipes have been developed by T. R. Weymouth, of Oil City, Pa., and discussed by him in a paper<sup>a</sup> written for and published by the American Society of Mechanical Engineers. These formulas, with that part of the paper that treats of the flow of gas in pipe lines, are given on pages 107 to 112.

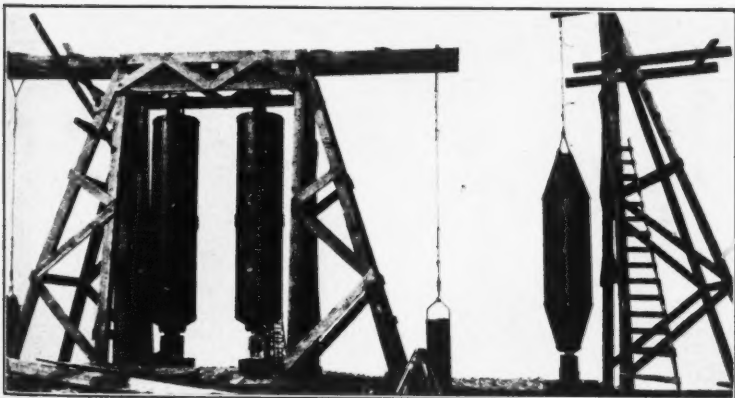
<sup>a</sup> Weymouth, T. R., Problems in natural-gas engineering: Trans. Am. Soc. Mech. Eng., vol. 34, 1912, pp. 193-234.



A. TWO SINGLE ENGINE-BED CASTINGS, WEIGHT 31,000 POUNDS EACH.



B. STARKE TRAP AND CONNECTIONS, USED WITH GUSHERS MAKING LARGE QUANTITIES OF OIL AND GAS.

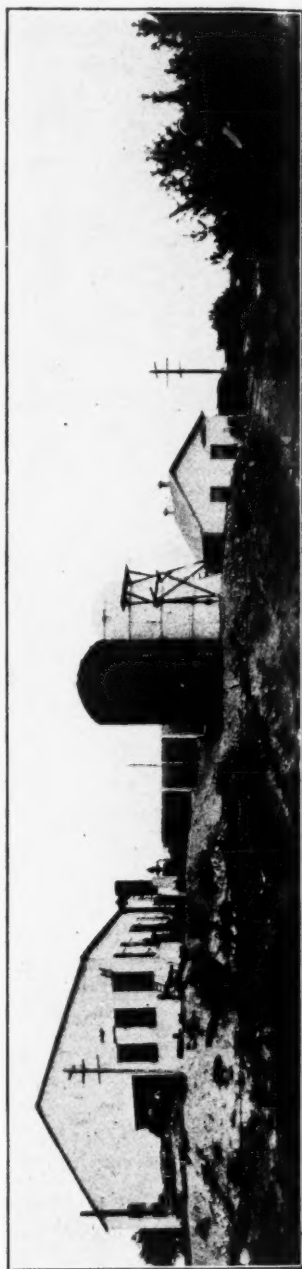


C. McLAUGHLIN COMPOUND TRAP (ON LEFT) AND McLAUGHLIN SINGLE-CHAMBER TRAP (ON RIGHT).



A. VIEW OF COMPRESSION PLANT.

Note tanks at left and cooling tower at right of compressor building.



B. COMPRESSION PLANT, DAILY CAPACITY 7,500,000 FEET, BUILT ON SLOPING GROUND. HAS GRAVITY SYSTEM FOR HANDLING WATER AND CONDENSATE.

**DRIPS AND SCRUBBERS.**

Particles of crude oil are often carried into gas lines from flow lines, flow tanks, and traps; these, with fractions of heavy vapors condensed by changes in temperature and pressure of the gas in the transmission lines would, if not removed, cause trouble in the pipes, damage machines and meters, and discolor the condensate produced in the first-stage accumulators.

**DRIPS.**

Drips are placed at the low points in gas pipe lines to collect and remove condensed moisture and naphtha vapors and crude oil carried into the line, which if permitted to accumulate would restrict the passage and might do considerable damage by being forced through the line as a slug, forming a powerful hammer. The type of drip usually found is constructed of one or two lengths of 6 or 8 inch pipe capped at both ends and connected by a 1 or 2 inch pipe and valve, placed at the lowest point of a downward curve in the gas main. The liquids settling to this point drain into the drip and are either blown out and wasted, or, if the quantity and quality warrant saving, are collected in tanks and, after being distilled or filtered, are used for blending or are sold.

Officials of a plant visited by the writer gave the following data on "line distillates" collected by tank wagons from the gas-line drips:

*Data on distillate collected from gas-line drips.*

	Volume collected, gallons.
August, 1915.....	7,000
November, 1915.....	14,625
January, 1916.....	19,142
March, 1916.....	11,549

Average gravity for an entire year, 55° B.

The figures represent the total quantity of condensate collected during the month named and show the direct effect of atmospheric temperature on the quantity precipitated. The product as collected was discolored, but as all the condensate produced was shipped to the refinery with the crude oil in pipe lines, the color of the line distillate was of no importance.

**SCRUBBERS.**

The term "scrubber," as used in the casing-head gasoline industry, is restricted in its meaning to tanks for settling liquids out of the gas or to tanks fitted with baffles or some form of filter for removing liquids or dust from the gas, and is not used, as in the coke-oven or the artificial gas industries, to designate equipment in which certain constituents are removed by chemical action or absorption in liquids.

The usual form of scrubber is a vertical tank (see Plate IV, B) varying from 3 by 6 feet to 6 by 20 feet in size, with a gas inlet in



the side and near the bottom, the end of the inlet pipe being turned downward or fitted with a baffle, so that the gas discharges toward the bottom. The gas rises through the tank slowly, thus permitting particles of liquid or dust to settle.

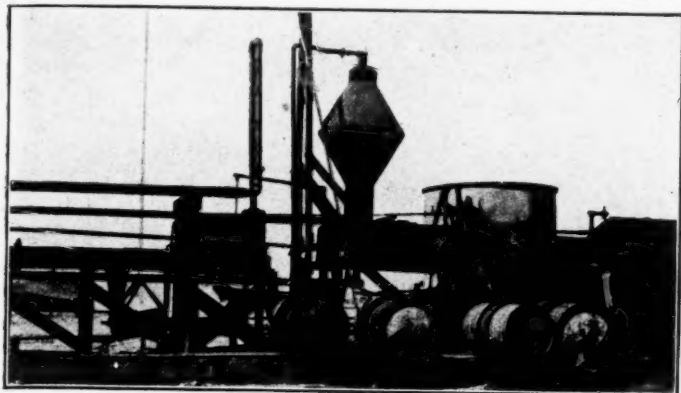
Scrubbers of the filter type are of the same size and form as the settling tank, but have perforated horizontal partitions on which are various filtering mediums such as moss, hay, or sponge. When the filtering medium becomes saturated or dirty it is removed and burned, if moss or hay, or is cleaned and replaced, if sponge is used. Scrubbers are always put in pipe lines ahead of compression machines, meters, and the pump. They also serve as intake receivers for the gas pump or the compressor, one tank, 3 by 6 feet in size, being used on the intake of each machine, or a tank of corresponding larger capacity for the entire plant intake.

#### VACUUM STATIONS.

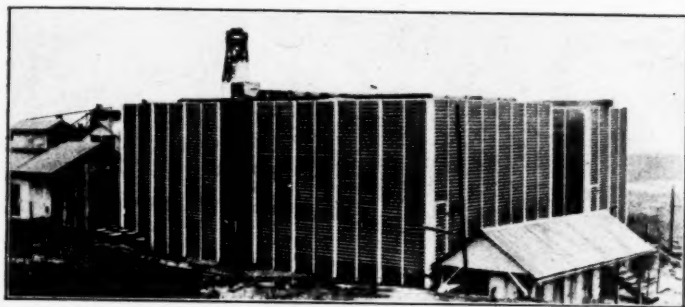
The number and the situation of vacuum pumps and booster stations on a gas-gathering system depend on the vacuum to be held on the wells, and the length and size of the pipe lines through which the gas is to be forced. When it is desired to hold the vacuum on the wells at the maximum, as is usual in the eastern fields, the vacuum pump must be placed near the wells, because friction, and often pipeline leakage, reduces the suction on the well. The most common vacuum-pump installation consists of a gas engine of 35 to 70 horsepower belted to a duplex pump having cylinders varying between 10 by 17 inches and 20 by 20 inches. Intake pressures vary between 14 and 26 inch vacuums, and discharge pressures between a vacuum of 5 inches and a gas pressure of 5 pounds.

The "booster," if used, is to be placed in the same building as the vacuum pump. Power is developed by a 25 to 70 horsepower gas engine, either belted or direct connected to a compressor used to increase the pressure and force the gas through field lines either to another pump and booster or to the main compression plant. Compressors used in this way take gas directly from the discharge of the vacuum pump, usually holding a light (zero to 5-inch) vacuum at the intake, thus relieving the pump from working against high discharge pressures. Gas pumps are built too light to pump gas against pressures exceeding 10 pounds and usually discharge at nearly zero gage pressure. Compressors used as boosters deliver gas to the lines at pressures of 20 to 40 pounds and at any temperature incident to the compression.

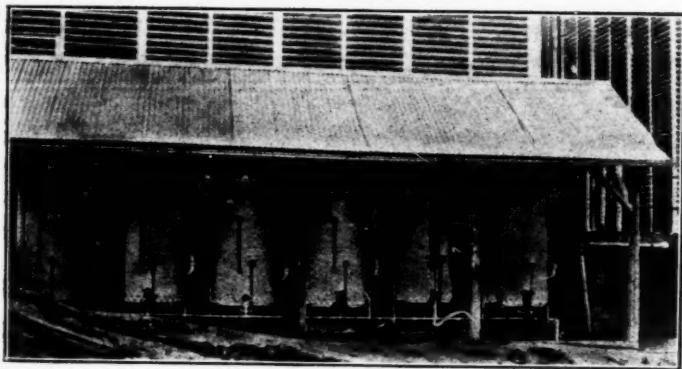
Keeping gas under positive pressure through as much of the gathering system as possible tends to prevent air being drawn in and contaminating the gas, although any pressure high enough to keep air from leaking in also permits some gas, charged with condensable



A. McLAUGHLIN CONE CHAMBER TRAP.

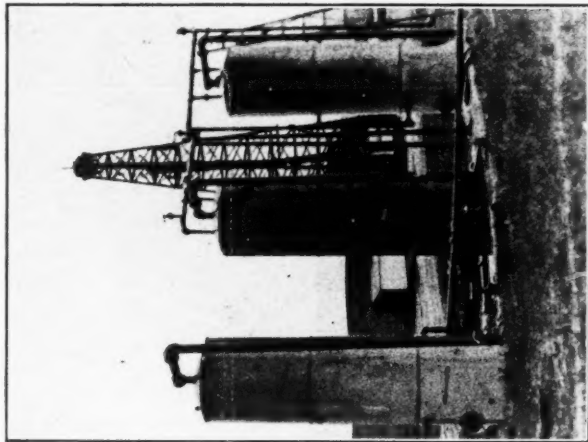


B. COOLING TANKS SET TO TAKE ADVANTAGE OF SLOPING GROUND AND OPEN-AIR CIRCULATION.

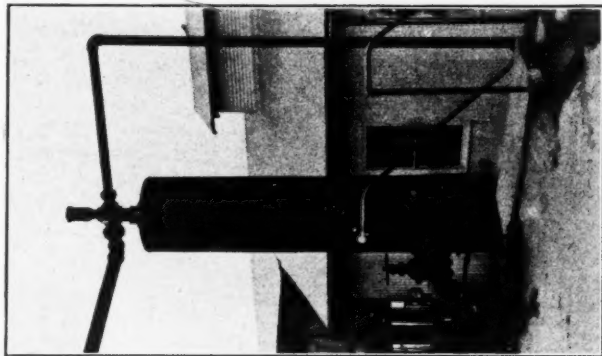


C. HIGH-PRESSURE AND LOW-PRESSURE ACCUMULATOR TANKS.

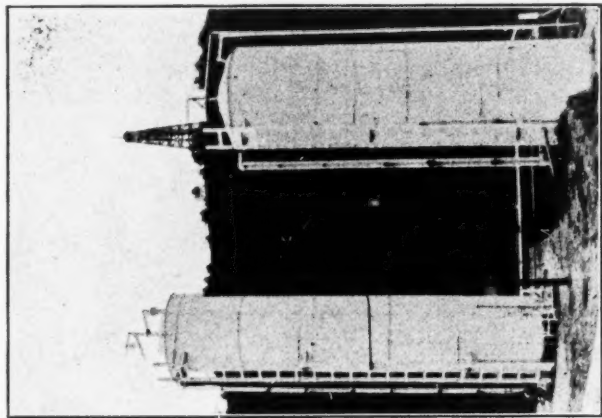
Note heavy double-riveted construction of high-pressure tanks.



A. SIMPLE CYLINDRICAL TRAPS.



B. INTAKE RECEIVER AT 1,000,000-FOOT PLANT.



C. "MAKE" AND STORAGE TANKS, SHOWING PIPING AND PRESSURE VALVES.

vapors, to escape. Air in gas cuts down the volume of gas treated, necessitates the use of higher pressures to precipitate the condensate, and carries varying proportions of water vapor which condense with the gasoline. Another advantage of transmitting gas under pressure is that pipe-line capacities are increased, making possible the use of pipe of smaller diameter in the gathering system.

There is a decided tendency at the present time in favor of welded joints in pipe lines to carry gas either at vacuums or positive pressures. It is claimed that lines with such joints cost less in upkeep and repairs and can be maintained practically gas tight.

#### SITUATION OF PLANT.

Factors entering into the problem of the best situation for a compression plant to treat gas from a given area are so numerous and varied that no rules which would apply even in a general way to all conditions found in oil fields can be given.

The most important factors and those which will have the greatest weight in determining the most practicable situation for a plant are: Water supply, transportation facilities, and the length of gathering lines and return dry-gas lines necessary. In eastern fields an ample water supply can usually be easily obtained from a creek, river, or well, and causes little concern to plant operators, but in the Mid-Continent and the western gas-producing areas the question of water supply often becomes of major importance.

In the California fields some plants pay as high as  $3\frac{1}{2}$  cents per barrel for water, which has to be treated or condensed before it is fit for use in boilers or jackets. Other plants pump their water for distances of several miles, and at these the cost of installation, operation, and upkeep of the pumps and the pipe lines make the cost of water an important item. One California plant is using water separated from the oil in a dehydration plant on the cooling coils, and is distilling and condensing water for jacket use, all other sources of water having practically failed.

It is obvious that the nearer the plant is to the center of gas production the smaller will be the size of the pipe lines and the amount of power required to conduct the gas to the plant. However, other factors, such as water-supply and transportation facilities may affect the choice of a site. The plant should be so situated as to suit best all conditions, each being considered in regard to the others. Compression plants are often built on a hillside, advantage being taken of the natural slope to install a gravity system of handling the water and the condensate. The water, being drained from all points of use to one pond or basin, requires only one pumping unit to return it to the top of the towers or the storage tank above the plant, from which it is drawn for all purposes. Plates II, B, and III, B,

show plants using a gravity system for handling water and condensate. In this system the condensate can be run by gravity from accumulators and "make" tanks to storage and blending tanks. The accumulators do not have to be set in pits or cellars; this is a decided advantage, because gasoline vapor may collect in such pits, unless they are thoroughly ventilated, in sufficient quantity to form an explosive or asphyxiating atmosphere and endanger the safety of the plant and the men. At plants visited by the writer three men have lost their lives by suffocation in pits filled with gasoline fumes. Some plants have a rule that a man before going into a cellar containing accumulator tanks shall notify another workman, or, if there is known danger from leaks, men shall work only in pairs or within calling distance of each other. Plants are often built on a hill or rise because of the better ventilation and the cooling effect on water towers and coils.

#### DATA ON PLANT PRACTICE.

A number of tables compiled from data taken at each of the plants listed in Table 2 or given to the writer by owners or by officials of the various companies are presented herein.

In Table 2, column 1 shows the field in which each of the plants is situated. Each plant is given a number, shown in column 2, which it retains throughout all tables and discussions following. Capacity and production data of these plants are shown in columns 3 to 5. Column 3 shows the quantity of gas treated, in thousands of cubic feet, as estimated by plant operators, or computed from meter readings, or from the compressor displacement and the number of revolutions, or the pipe-line capacities at measured pressures. Column 4 represents the production, after weathering, of unblended gasoline, and is approximately the quantity of condensate sent to market. Tank-car outage (or loss in transit) has not been deducted, as that factor varies widely with the distance traveled by the cars and the temperatures encountered during the shipment. Column 5 shows the number of gallons of condensate produced from each thousand cubic feet of gas treated, based on the plant capacity and the total product sold, as indicated in column 4. The gravity in degrees Baumé, as given in column 6, is determined from the plant product as a whole, before blending, or computed from the gravity of the blend, the quantity and the gravity of the blending stock used being known.

## DATA ON PLANT PRACTICE.

29

TABLE 2.—Data showing situation, capacity, and output of the plants visited, and the gravity of the product.

Field where plant is situated.	Plant No.	Capacity (in 1,000 cubic feet).	Daily production, gallons.	Gallons produced per 1,000 cubic feet of gas.	Gravity, °B.
<b>California fields:</b>					
Fullerton.....	1	1,000	600	0.60	68
Do.....	2	350	1,200	3.40	76
Do.....	3	450	700	1.50	78-80
Do.....	4	1,250	1,600	1.30	72-74
Do.....	5	5,000	1,200	.24	
Santa Maria.....	6	2,500	5,500	2.20	81
Do.....	7	7,500	7,500	1.00	70
Do.....	8	500	500-600	1.00	70
Do.....	9	1,000	2,500	2.50	80
Do.....	10	750	1,200	1.60	74
Do.....	11	1,500	3,000	2.00	79
Do.....	12	700	1,500	2.10	81
Do.....	13	(a)			
Ventura.....	14	1,000	2,000	2.00	86
Do.....	15		800		
Salt Lake.....	16	250	325	1.30	65
Do.....	17	750	810	1.10	60-65
Do.....	18		1,500		68-70
Midway.....	b 19	1,800	1,400	.78	68
Do.....	20	1,500	1,400	.90	67
Do.....	b 21	1,000	700	.70	80
<b>Eastern fields:</b>					
Bradford, Pa.....	22	600	1,200	2.00	96
Sistersville, W. Va.....	23	200	800	4.00	88
Do.....	24	375	1,500	4.00	90
Do.....	c 25				
Do.....	26	500			88
Southern Illinois.....	27	750	500	.75	83
Do.....	28		200		83
Do.....	29				
<b>Mid-Continent fields:</b>					
Glenn pool.....	30	750	3,000	d 4.00	
Do.....	31	375	1,500	d 4.00	77
Do.....	32	3,000	22,500	7.40	84
Do.....	33	1,800	9,000	5.00	82
Do.....	34	750	6,250	7.00	82
Do.....	35	350	1,590	4.52	96
Do.....	36	2,000	2,310	1.10	78
Do.....	37	400	2,565	6.40	85
Do.....	38	750	6,055	6.70	
Do.....	39	200	510	2.50	
Do.....	40	250	600	2.40	
Do.....	41	350	550	1.60	
South Glenn pool.....	42	450	1,200	2.40	
Morris.....	43	300	300	1.00	
Do.....	44	500	1,850	3.60	
Beggs.....	45	350	710	2.10	
Muskogee.....	46	300	730	2.44	
Do.....	47	350	300	.85	
Glenn pool.....	48	1,200	2,380	2.00	
Cushing pool.....	49	2,000	2,810	1.40	
Cleveland.....	50	1,200	2,000	1.67	
Muskogee.....	51	250	925	3.70	
Do.....	52	250	500	e 2.00	
Cushing.....	53				
Nowata.....	54	f 2,250	10,000	4.00	
Do.....	55	1,250	1,600	1.70	
Do.....	56	380	600	1.60	
Do.....	57	830	1,500	1.60	
Morris.....	58	2,000	3,000	1.50	
Do.....	59	400	725	1.90	
Nowata.....	60	1,000	1,900	1.90	
Do.....	61	500	1,100	2.20	
Do.....	62	280	420	1.50	
Glenn pool.....	63	487	1,948	g 4.00	
Do.....	64	515	2,062	g 4.00	

a Plant not in commission.

b Plant capacities doubled and expansion sets installed or improved; product per 1,000 feet of gas increased.

c At this plant gas is compressed in one stage to a pressure of 150 pounds.

d Estimated.

e Eight per cent water with high and low pressure product.

f Thirty per cent air.

g Volume of gas estimated from product at 4 gallons per 1,000 cubic feet, a conservative estimate for gas from wells in the Glenn pool.

TABLE 2.—*Data showing situation, capacity, and output of the plants visited, and the gravity of the product—Continued.*

Field where plant is situated.	Plant No.	Capacity (in 1,000 cubic feet).	Daily production, gallons.	Gallons produced per 1,000 cubic feet of gas.	Gravity, °B.
Mid-Continent fields—Continued.					
Glenn pool.....	65	90	350	4.00	
Do.....	66	90	351	4.00	
Do.....	67	98	394	4.00	
Do.....	68	136	545	4.00	
Do.....	69	125	500	4.00	
Do.....	70	141	566	4.00	
Do.....	71	712	2,864	4.00	
Do.....	72	375	1,500	4.00	
Do.....	73	466	1,864	4.00	
Do.....	74	124	496	4.00	
Do.....	75	173	690	4.00	
Caddo (Louisiana).....	76	2,000	3,000	1.80	79
Do.....	77	400	640	1.60	79
De Soto (Louisiana).....	78	45	350	7.00	73
Caddo (Louisiana).....	79	250	1,050	4.20	6.80
New Jersey: Refinery.....	80	1,750	5,400	3.09	76-93

<sup>a</sup> Volume of gas estimated from product at 4 gallons per 1,000 cubic feet, a conservative estimate for gas from wells in the Glenn pool.

<sup>b</sup> 50 per cent of this product was from low-pressure cylinder and 50 per cent from high-pressure cylinder and expansion coil.

In the following pages the writer has endeavored to describe as nearly as possible the treatment of natural gas in the recovery of gasoline by the compression process, and the mechanical units used.

The controlling functions of low and high pressure compression units of the plants studied by the writer are shown in Table 3.

Plant 2 is described in detail in pages 63 to 65. Plant 5 is a gas-pumping station, the condensate collected in cooling the gas before transmission is noted as production in Table 2 (p. 29). This gas after transmission through the pipe lines is treated in an absorption plant. Plant 10 uses three-stage compression. Plant 25 uses one-stage compression, compressing to a pressure of 150 pounds. Plant 80 is a refinery at which uncondensed still vapors are treated by compression; this plant is described in detail in later paragraphs.

#### PLANT INTAKE.

Table 3 shows that the temperature and the pressure at the plant intakes vary widely. The pressures tabulated as pressure at plant intake represent the pressure shown at the suction of the first-stage compression cylinder. Vacuum pumps, even if installed at the plant, are considered as part of the gathering system, and vacuum at plants where the compression cylinders are used to hold vacuum on the gathering system is taken as part of the compression operation and not as a part of the gathering system to which it rightly belongs. The intake pressures used vary from 18-inch vacuum to 5-pound pressure, and the temperatures from 60° to 125° F., the average



pressure being approximately that of the atmosphere, and the average temperature 80° F. The temperature of 60° F. noted above was recorded at plant 1, where the gas is cooled in coils placed in a water tower before it is compressed, and the temperature of 125° F. at a plant where a vacuum-pump discharge is used as the first-stage suction without cooling.

#### PRECOOLING.

Cooling the gas before it enters the first stage of compression, although not generally practiced, has distinct advantages. Reducing the temperature of the gas decreases the volume, the intake pressure remaining the same, so that more gas is taken into the compressor cylinder at each stroke, thus increasing the efficiency.

In warm climates plants having gathering lines, traps, and scrubbers exposed to the sun, which may heat the incoming gas to temperatures higher than 110° F., or having gas pumps and "booster" compressors in the gathering systems with no cooling coils after such units and before the plant intake, can by installing coils or other cooling apparatus increase both the plant efficiency and the carrying capacity of the pipe lines. Cooling the intake gas 30° or 60° F. will increase the quantity treated by a compression unit 5 to 10 per cent and lower proportionally the temperature of the gas discharged from the compressor.. (See Table 11, p. 112.)

A plant in California lowered the temperature of the gas about 40° F. by passing it through a water-cooled coil ahead of the low-pressure intake. On the day of the writer's visit 1,250,000 cubic feet of gas was handled and the temperature lowered from 114° to 74° F. The coil used consisted of twelve 3-inch pipes 25 feet long, in 10-inch headers, placed horizontally in the cooling tower below the high and the low pressure gas coils.

A plant in Louisiana uses water cooling ahead of the vacuum pump and the first-stage compression intakes. In gas transmission gas piped to market is always cooled before being permitted to enter the mains, in order to increase the capacity of the line and to precipitate as much condensate and water vapor as possible.

TABLE 3.—Data on compression.

Plant No.	Low-stage compression.					High-stage compression.							
	Intake.		Discharge.		Cooling coils.			Compressor discharge.		Cooling coils.			
	Pressure, inches of vacuum.	Temperature, °F.	Pressure, pounds per square inch.	Temperature, °F.	Total surface area, square feet.	Square feet per horse-power.	Square feet per 1,000 feet of gas treated.	Discharge temperature, °F.	Rated horse-power.	Total surface area, square feet.	Square feet per horse-power.	Square feet per 1,000 feet of gas treated.	Discharge temperature, °F.
1	10-15	60	40	(a)	500	0.500	60	220		500		0.500	60
2	11		37										
3	55		55										
4	2	(b)	50		220	4.00	68	250	55	220	4.00	490	68
5	3-10	72	50	240	587	3.91	470	240	150	1,225	3.91	500	70
6	0-1.4	78	54	200	1,225	500	81	250	190	3,600	2.97	475	78
7	900	80	33	245	475	4.00	481	250	245				
8	160	80	25			2.97		200					
9			c 12										
10	7		d 80		975		e 920	250				(f)	
11	2-5	65	36	240			d 480					(g)	
12	5	65	43		585	2.43	390	190	235	585	2.43	390	72
13	(h)		50		450	2.80	70	225		160	2.80	640	70
14	50	(b)	40	200	504	3.05	504	250	165	504	3.05	504	70
15	150	(b)	40		167	3.35	670	240	50	167	3.35	670	
16	150	(b)	35		420	2.95	390	235	150	420	2.95	590	
17	262	68-80	35	250	660	2.87	370	275	262	660	2.87	370	70-80
18	247		50						247				
19	150	78	50	250	528	3.50	528	250	150	528	3.50	528	68
20	90		40	180	146	1.63	244	300	90	292	3.26	488	60
21	17		15		100	5.90	500	90	17	150	8.80	750	
22	35		10					100	35				
23	12		25					120					
24	5		50		(h)			300	100	350	3.50	480	70
25	6												
26	100												
27													
28	5								100	350	3.50	480	70
29	5												
30	105		60		(h)			300	25	190	7.60		70
31	55		50		375	3.60	501	270	105	882	8.42	1,200	
32	350	(b)	50	500	220	4.00	590	250	55	220	4.00	590	
33	280	(b)	50	160	880	2.51	292	250	350	880	2.51	292	
34	150	(b)	40		670	2.40	370	225	280	670	2.40	370	95
35	50		45		733	4.90	975	225	150	1,250	8.40	1,650	(b)
36	240		45		210	3.20	600	250	50	420	8.40	1,200	
37	85	0-5	45		840	3.20	920	250	240	1,290	5.25	1,650	
38			45		210	2.47	520	245	85	410	4.94	1,400	

38	150	5	45	315	2.10	420	250	150	380	2.56	50
39	160	0	45	780	4.85	650	250	160	1,470	9.20	1.23
50	55	6	45	147	2.70	590	250	55	286	5.20	1.14
51	50	9	25	210	4.20	840	250	50	610	12.4	2.44
52		5	45				250				
53											
54	450	8	40	610	1.35	270	275	450	975	2.16	.43
55	150	0	48	505	3.36	404	250	150	505	3.36	.404
56	105	4-8	40	505	4.80	1.36	300	105	505	4.80	1.36
57	175	4-5	40	840	4.80	1.01	250	175	840	4.80	1.01
58	300	4-5	80	1,760	5.9	.88	(j)				
59	50	0 2	90	590	11.80	1.47	(j)				
60	50	0-2	75	200	11.80	13.00	(j)				
61	50	0	50	225	2.42	.50	250	52	252	4.84	1.10
62	52	0 1	43	253		.189	160	52	566		.378
63											70

*j* Varied from positive pressure of 5 pounds to vacuum of 5 inches.

*g* Pounds, positive pressure.

*h* No coils used between low-stage and high-stage compression.

*i* At coil intake.

*j* Single-stage plant, no blend ng.

*a* Ammonia process used from this point on.

*b* Atmospheric.

*c* Low-pressure cylinder; three stages used.

*d* Intermediate cylinder.

*e* 0.920, low compression; 0.480, intermediate compression.

**FIRST-STAGE PRESSURES AND TEMPERATURES USED.**

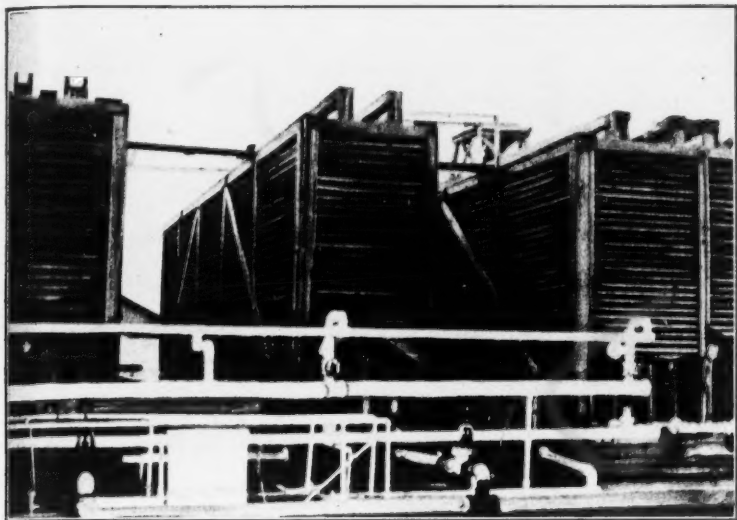
In plants using two-stage compression, the average pressure developed by the first stage is between 40 and 50 pounds per square inch; the temperature rises to between 200° and 250° F., depending on the temperature of the gas at the compressor intake and the number of compressions developed.

The increase in temperature of the gas from compression is a function of the power used to raise the pressure to the desired point. The power used depends on the number of compressions through which the gas is forced between its initial and final volume. As the amount of power actually expended, and not the initial and the final pressure, determines the rise in temperature the temperature increase due to a given number of compressions should be the same. If the intake temperatures of the high and the low stage compressor cylinders are equal, the final, or discharge, temperature of both cylinders of a two-stage compressor or of two single-stage machines acting as a high and a low stage unit should be the same, provided they are of equal horsepower and working properly and under uniform conditions. This is found to be approximately true in plant practice, as is shown by the temperatures of the compressor discharges given in Table 3.

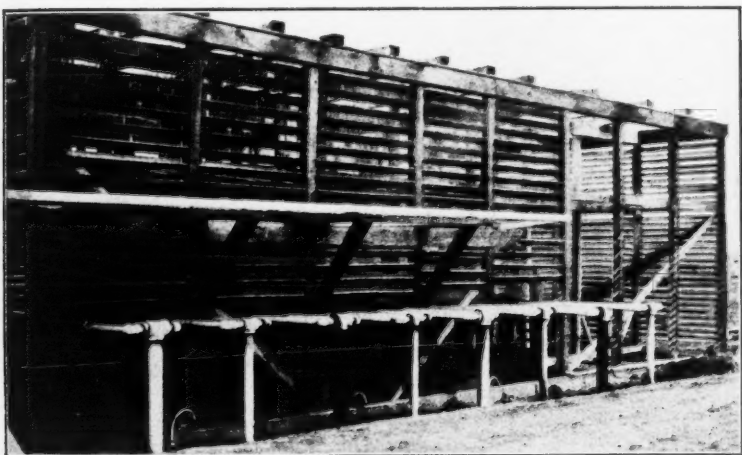
The line carrying the compressed gas from either the high or the low stage cylinder is usually fitted with safety valves set to pop at pressures of 5 to 20 pounds above the desired pressure in order to protect the machine in case a valve farther along in the system may have been left closed or a pipe in the coils or other units in the gas circuit should become stopped or clogged, thus causing pressure to build up throughout the system. In plants using expansion engines this condition may occur at any time through the engine valves freezing, thus stopping the usual discharge.

**ATMOSPHERIC COOLING.**

The compressed gas discharged from the compressor is carried through an oil separator, placed just ahead of the cooling coils, which traps any lubricating oil vaporized in the cylinders or carried mechanically with the gas, the oil being condensed by the time the gas reaches the trap. Cooling to this point is effected by radiation to the atmosphere surrounding the gas discharge pipe and to the jacket water around the compressor cylinder. Some operators are employing air cooling extensively in order to save water, the practice being to use a much larger pipe, exposed as far as possible to the atmosphere, for conveying the hot gas from the compressor discharge to the water coils, thereby reducing the speed of flow and so increasing the time of transmission that the temperature of the gas is materially lowered. One plant with a daily capacity of 1,250,000 feet and using 6-inch pipe to carry both high and low



A. COOLING TOWERS, MANIFOLD INTAKE, AND DISCHARGE LINES AND HEADERS.



B. HIGH AND LOW PRESSURE COILS WITH INTAKES ALTERNATING.



pressure gas to the coils, reduces the temperature between the compressor discharge and the coil intake  $80^{\circ}$  ( $240^{\circ}$  to  $160^{\circ}$  F.) even in warm weather. In cold weather the reduction is greater.

Methods of air cooling are being rapidly developed and installed in districts where water is scarce and expensive, or the supply uncertain.

#### COOLING COILS.

In the eastern fields the cooling coils are generally of the continuous, submerged type, consisting of a 2-inch pipe 20 feet long, submerged in a tank of water. The total length of the coil varies between 300 and 500 feet, and the radiating area is 0.6 to 0.7 square feet per 1,000 cubic feet of plant capacity, and 2 to 5 square feet per horsepower used in compression. A continuous flow of water through the tank cools the gas to approximately the same temperature as the water.

In western and Mid-Continent practice a different method has been developed. Because of the difficulty of obtaining a continuous supply of cool water, it is necessary to use the same water over and over again in a closed circuit, the water being cooled in towers or in sprays over the principal storage pond or basin.

#### COOLING WATER BY EVAPORATION AND RADIATION.

Water exposed to air cools in two ways—by radiation, as long as the water is warmer than the air, and by evaporation.<sup>a</sup> To obtain the greatest cooling effect the water must be so exposed to the air as to present the greatest possible surface. At some plants the water is cooled in towers (Pl. V, A) by means of sprays, or by permitting the water to fall in small streams on wire netting or screens, usually placed above the coils, thus atomizing the water and presenting a large surface to the air. The falling spray is often collected by V-shaped troughs that are placed a few inches above the top pipe of the coil and direct the flow of cooled water over the entire series of pipes. The water, dripping from the lowest pipe of the coil, is collected in a shallow basin beneath the coil and the tower, pumped to the top of the tower, and used again.

Plates VI and VII show views of a compression plant and the general arrangement of towers, compressor building, and storage tanks.

Some plants use a spray over a pond. The water is collected beneath the coils and conducted to a cistern from which it is pumped through upward sprayers placed over the storage pond, thence it is again pumped over the coils. The finely divided particles of water in the spray are cooled by radiation and evaporation while falling into the main body of water below. This system, although producing

<sup>a</sup> Hausbrand, E., *Evaporating, condensing, and cooling apparatus*, 1903, 400 pp.



satisfactory temperatures, wastes more water than the tower installations, more being carried away mechanically by the wind; there is also a waste due to seepage, if the pond is of earth. The surface of the water in the pond is often exposed to the heat of the sun, which warms the body of water after cooling and before use over the coils. The sun has a decided effect in raising the temperature of the water in regions where the weather is warm during a large part of the year, as in Oklahoma and southern California.

#### WATER COOLING IN TOWERS.

In towers, during hot dry weather, temperatures  $10^{\circ}$  to  $40^{\circ}$  F. below that of the atmosphere are at times obtained with minimum losses of water. Many plant operators who have not experimented to find the amount of water that gives the lowest temperature to the gas being treated, use far more than is needed or gives the best results. Water falling in excessive quantities in a tower does not acquire the lowest possible temperature from radiation or evaporation, and the large bulk of water flowing over the coils can not cool the gas as efficiently as a smaller amount does, for the same reason. The best results are obtained when minimum quantities of water are circulated and finely divided while passing downward through the tower. Only enough of the cooled water should be directed onto the pipe coils to keep all parts thoroughly wet, thus giving the water the greatest possible opportunity to evaporate.

The use of auxiliary cooling agents such as ammonia or ammonia and brine is discussed later in connection with the descriptions of plants using such methods.

It may be of interest and use to operators to note here the latent heats of vapors being treated in the cooling coils. Burrell<sup>a</sup> gives the following values for the latent heats of some petroleum distillates:

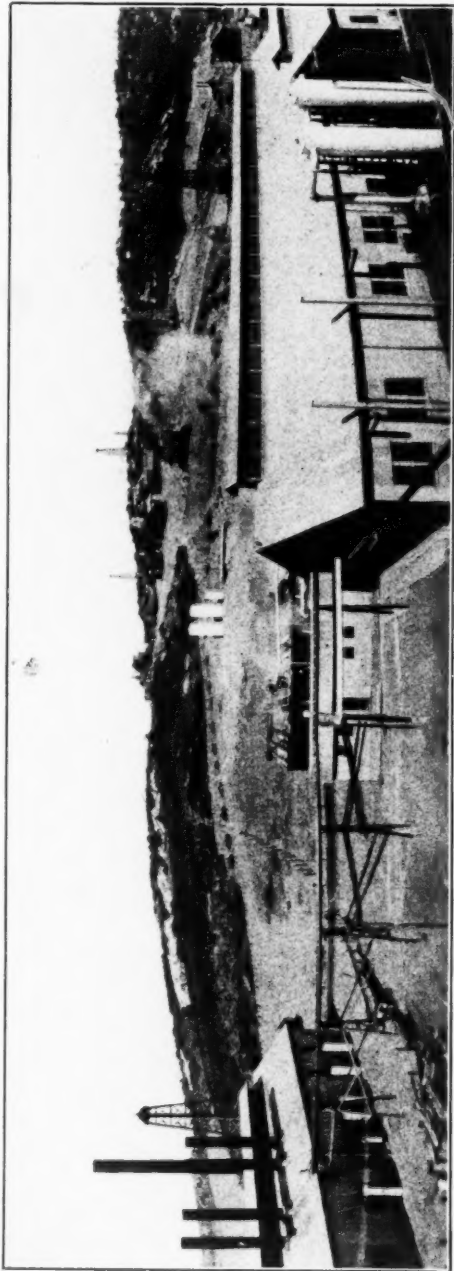
*Specific gravities and latent heats of four distillates.*

	Specific gravity, °B.	Latent heat, B. t. u. per pound.
Kerosene.....	43	105
Naphtha.....	56	103.5
Gasoline.....	65	100.6
Gasoline.....	89	100.2

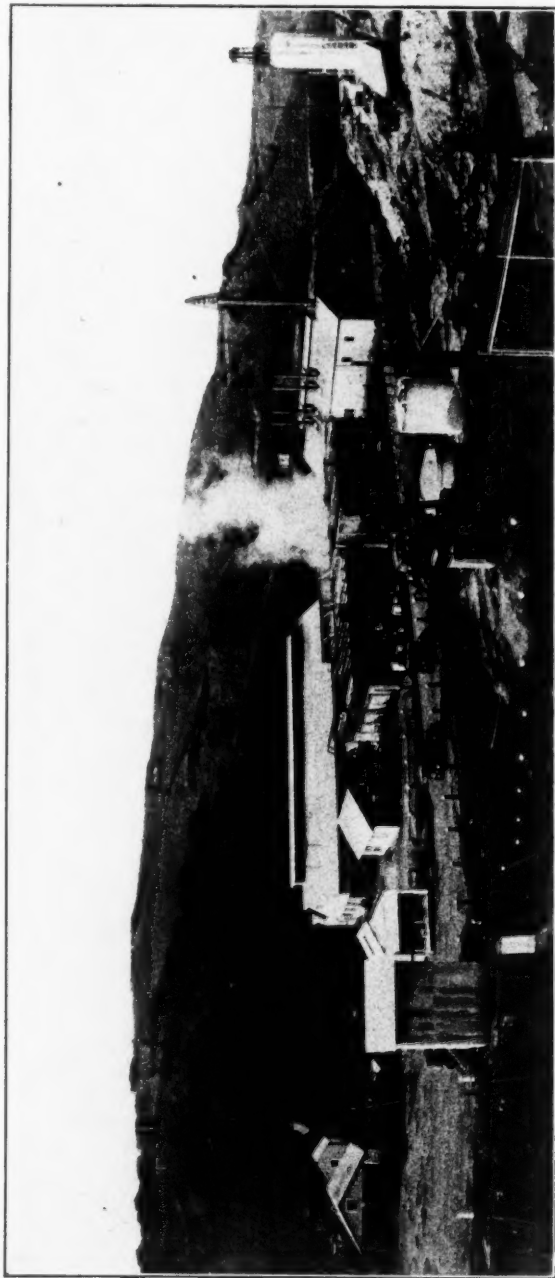
In gasoline computations it is customary to use as the latent heat 100 B. t. u. per pound. Kent gives the specific heat of liquid gasoline of specific gravity 0.68 to 0.70 as 0.53 to 0.55, and Lucke<sup>b</sup> quotes Regnault as stating that methane gas has a specific heat of 0.5929 at constant pressure and 0.4505 at constant volume.

<sup>a</sup> Burrell, G. A., Personal communication.

<sup>b</sup> Lucke, C. E., *Engineering thermodynamics*, 1912, p. 578.



VIEW OF 2,500,000-FOOT PLANT SHOWING ARRANGEMENT OF COMPRESSOR BUILDINGS, TOWERS, AND STORAGE TANKS.



ANOTHER VIEW OF PLANT SHOWN IN PLATE VI.

**TYPES OF COILS AND CONNECTIONS USED.**

Two systems of pipe connections are used between compressor discharges and cooling coils. In one system all low-stage compressors, and likewise all high-stage compressors, discharge the compressed gas into a common pipe or manifold, from which it is distributed by a manifold to the different sets of coils being used to cool the hot gas. (See figure 9, page 50.) The other system is to lead the gas discharged from each cylinder through a separate coil which cools only the gas from that compressor, the gas treated by each unit being kept separate throughout its entire circuit. The first method has the advantage of permitting one coil to be shut down or cut out for repairs while the compressor is running, the discharge from that machine being cooled in the coils still in use, or conversely, the coil may remain in use while the compressor is idle, and treat gas from other units. In the second method of connection if any coil or machine is out of commission the entire unit of which it is a part must be stopped, causing more of the plant to be idle.

Throughout the districts making natural-gas gasoline the 2-inch pipe in cooling coils is standard, and only a few plants using other sizes were found by the writer.

Systems and methods of connection vary widely, ranging from continuous return-bend coils in which all of the gas passes through the entire coil, to coils which divide first into two or more headers, and then into numerous separate pipes. In the multiple-header system each portion of gas passes through short lengths (20 to 80 feet) of the coil, and is again collected by headers before going to the accumulator tank and to the next stage of treatment. In the continuous system the gas passes rapidly through the total length of pipe, its temperature being reduced during the whole time of travel from end to end of the coil. In the multiple method the rate of flow in each pipe is reduced in proportion to the number of pipes used, so that the gas is sufficiently cooled while traveling through such a short length of coil.

There is much difference of opinion among operators as to which method gives the more satisfactory results. Many of the newest plants combine the two methods, as follows: Each coil unit is divided at the intake by a header into 3 to 12 sets of 2-inch continuous return-bend coils, each being 4 to 16 pipes high, and generally 20 feet long, depending on the cooling area desired. The intake header is placed horizontally at the top of the coil so as to allow the gas to travel downward in the same direction as the condensate. At the lower end of each set of return-bend coils the gas and condensate are again collected in a header before passing to the accumulator tank. Coils of this type and of the single-pipe continuous type have

the great disadvantage of being "hard to get at" in case any length of pipe in the coil needs replacement, whereas in multiple-header coils in which the ends of each pipe are packed in a gland, any member can be removed or replaced without taking down any other part of the coil.

#### DIRECTION OF FLOW OF GAS AND CONDENSATE.

It is universally conceded that the direction of flow of gas and condensate should be parallel and not countercurrent. As the liquid will drain toward the lowest point in the coil, the gas must enter at the top in order to flow with the condensate. As an illustration of the effect of counter flow, a plant in the Caddo field using a countercurrent flow of gas and condensate in the water-cooled coils produces no condensate whatever in the accumulator tank at the end of these coils. The gas yields 11.8 gallons of condensate per 1,000 cubic feet treated, but this condensate is all precipitated in double-pipe condensers cooled by expanded gas to a temperature of 38° F., in which the flow of gas and liquid are parallel. Undoubtedly some condensate would be precipitated in the water-cooled coil if the direction of gas flow was reversed. Other plants have obtained similar results under like conditions; one example being a California plant, in which the coil discharge pipe sloped upward to the accumulator tank, permitting condensate to gather in the bottom coils and discharge pipe and be constantly in contact with flowing gas. The accumulator tank was lowered so as to allow a drop in grade from the coils, with the result that the yield of condensate at that point increased noticeably. It seems that the condensate on long and intimate contact with the gas as above described, is again taken up by the gas as a vapor, even at high pressures, and carried to some point more conducive to precipitation and separation.

That condensate vaporizes in accumulator tanks has also been proved and has given rise to the practice of trapping off the liquid as soon as collected. Because of the facts stated, it appears to be the best and most productive practice to separate the gas and condensate as soon as possible after all the condensable fractions have been precipitated and always to allow the gas and condensate to flow in the same direction. If the above arguments hold true under all conditions, it would seem to be advisable to divide the gas to be cooled into a number of coils or pipes that will retain it only long enough to obtain the maximum cooling effect from the water used, and to separate the gas and condensate as soon as possible.

In order to divide the gas from a header equally in each of the coils or pipes of a coil, an orifice disk is sometimes placed in the intake from the header; the constriction causes a slight back pressure, forcing the gas to enter each coil in approximately equal quantities. The

size of the orifice is arbitrarily determined by making the sum of the areas of the orifice openings equal to the cross-sectional area of the pipe leading the gas to the header from the compressor discharge or the discharge manifold, as the case may be.

#### **RADIATING AREA OF LOW-PRESSURE COILS.**

In Table 3 the total surface areas of coils used in cooling gas from low-stage cylinders of various plants visited by the writer are tabulated, with the area per 1,000 cubic feet of gas treated per day; also, the area per horsepower used in compression. The average area of coil is between 0.6 and 0.7 square feet per 1,000 cubic feet of gas treated daily and nearly 3.5 square feet per horsepower used in compression. The latter factor is more useful for plant design, as the heat developed in compressing gas is a function of the power used in compression and not of the volume of gas being treated. A cooling area of 4 square feet per horsepower is usually used at gas-pumping plants and has proved satisfactory in most fields.

Column 10, Table 3, gives the temperature of the gas leaving the low-stage water-cooled coils at plants where such data was recorded and available. Minimum temperature should be maintained to precipitate the maximum percentage of condensate and benefit high-stage compression, as explained in previous paragraphs.

From these coils the gas passes to the low-stage accumulator tanks. Each coil may be provided with a separate tank or all the coils may be manifolded to one tank. Plate III, *C* (p. 26), shows the alternate arrangement of accumulator tanks of high and low pressure coils, each coil having a separate tank. The tanks are usually 3 to 4 feet in diameter by 6 to 10 feet high. The gas is led in at the side of the tank and near the top through a pipe turned or baffled downward inside of the tank, discharging at a point about midway between the top and bottom. The condensate settles to the bottom; the gas discharges at the top to the intake line of the high-pressure cylinder if each unit is independent or to the high-pressure intake manifold if that system is used.

High and low pressure coils, with intakes alternating, used at one plant are shown in Plate V, *B* (p. 34).

#### **PRODUCTION FROM LOW-PRESSURE TREATMENT.**

The proportion of condensate collected in the low-stage accumulator tanks averages 15 to 30 per cent of the total yield and varies between nothing and 40 per cent, depending on the content of condensable fractions in the gas and on the temperature and the pressure used. Some operators permit condensate to accumulate in the tanks until the entering gas is forced to pass through it, or to accumulate for a given time, and then run it into the storage tank through a hand valve.

The general practice, however, based on the theory that to separate gas and condensate as soon as possible produces the best results, is to remove the condensate from the accumulator tanks continuously with a small automatic trap that dumps often and with but little agitation keeps the tank practically empty at all times.

#### HIGH-PRESSURE TREATMENT.

From the low-pressure accumulator tanks the gas passes into the high-pressure cylinder of the compressor, and the cycle is repeated except that the higher pressure causes the lighter hydrocarbons to condense.

#### RADIATING AREA OF HIGH-PRESSURE COILS.

Table 3, which gives the average surface areas of both high and low pressure cooling coils at the plants visited, shows that a somewhat larger cooling area is used for the high-pressure gas. The area of high-pressure coils per 1,000 cubic feet of gas cooled daily was between 0.7 and 0.8 square feet and about 4.5 square feet per horsepower used in compression, whereas that of the low-pressure coils averaged between 0.6 and 0.7 square feet per 1,000 feet of gas and 3.5 square feet per horsepower. If the same amount of power is used by each cylinder of the compressor, there seems to be no reason why one cooling area should be larger than the other, unless the gas was not cooled in the low-stage coils to the temperature later obtained in the high-pressure coils.

The experience of A. W. Peake,<sup>a</sup> engineer in charge of gasoline production of the Mid West Oil Co., causes him to "believe that the coil area of the intercooler should be larger than the area of the aftercooler coils, as it permits condensation of more gasoline in the intercooler and reduces the chance of carrying condensate over into the high pressure cylinders, causing trouble by cutting the lubricating oil and thus wearing out the cylinders in a short time. This trouble has been experienced in quite a few plants. Increasing the intercooler area has been known to help overcome this, as also has been the placing of a steam or oil trap or some similar arrangement in the gas line, between low-pressure accumulators and high-pressure cylinder intake."

#### PERFECT COOLING.

Perfect cooling between low and high stage compression implies cooling the gas before it enters the high-pressure cylinder to the same temperature that it had on entering the low-stage unit. Such cooling is necessary if the two stages are to use the same amount of power in compressing equal quantities of gas an equal number of compressions. As shown in Table 3, the temperature of the gas

<sup>a</sup> Peake, A. W., Personal communication.



at the low-stage intake is usually higher than at the high-stage intake. Such a condition would, if the number of compressions were equal in each stage, cause an unbalancing of power in the high and the low pressure cylinders. In compression plants with imperfect cooling between stages the work in the cylinders is allowed to take care of itself in such a way that the number of compressions in the two stages is not exactly equal. As stated in previous paragraphs, it would be better practice to cool the gas at the plant intake to as low a temperature as practicable in water-cooled coils and to use the same temperature between compression stages and in the high-pressure coils. In general, to keep the gas at the lowest practicable temperature at all times during treatment is the best practice. From the high-pressure coils and accumulators the gas passes to the field fuel lines or, if expanded gas is used to reduce the temperature still lower, it is led to the high-pressure coils cooled by expanded gas.

#### USE OF EXPANDED GAS FOR COOLING.

TABLE 4.—Data on cooling of gas by expansion at various plants.

Plant No.	Discharge temperature of gas cooled in high-pressure coils.	Method of expansion.	Expansion unit discharge.			
			First stage.		Second stage.	
			Temperature.	Pressure.	Temperature.	Pressure.
	° F.		° F.	Pounds.	° F.	Pounds.
1.		Expansion valve.		25		
2.		Drilling engine.		10		
4.	42	Expansion valve.		10	(a)	(a)
6.	-6 to -17	2-stage expansion engine.		64	-40	10
7.	20 to -7	do.		30		
9.		do.		30		5
10.		1-stage expansion engine.		30		15
11.	10	do.	-40	15		
12.		do.		12		
14.	40	do.	-20	25		
16.	50	do.		14		
17.		do.		(b)		
19.	40	do.	32	26		
20.		do.				
21.		do.	32	55		
23.		Expansion valve.				
25.	65	2-stage expansion engine.			-30	10
26.	-30	do.		60	-12	5
31.		Expansion valve.				
33.		do.				
35.		1-stage expansion engine.	24			
37.	40	do.	37	10		
38.	66	do.	30			
39.	60	Expansion valve.				

a Changed to expansion engine.

b Vacuum.

#### METHODS OF EXPANSION.

At many plants the gas after treatment in high-pressure water-cooled coils and accumulator tanks is further cooled, still at maximum pressure, in heat interchangers or double-pipe condensers by expanded gas. Two methods are used to obtain low temperatures

by the expansion of gas, (1) expanding the gas through a small opening or valve to a lower pressure, thus producing the absorption of heat, and (2) expanding the gas adiabatically in the power cylinders of a steam power unit, such as a compressor, pump, or drilling engine. Table 4 gives methods of expansion used at plants visited, also temperatures and pressures of the gas at the different stages of expansion and cooling.

#### EXPANSION THROUGH AN ORIFICE OR VALVE.

In the first method the high-pressure gas carrying some gasoline not removed by previous treatment is passed through either the inside or outside pipe of a double-pipe heat interchanger, and the dry gas is expanded through a small opening, such as a  $\frac{1}{2}$ -inch valve, between the pipes, thus cooling the high-pressure gas and causing further condensation of gasoline. The high pressure gas and the condensate are led to an accumulator tank, where the condensate is collected and removed. From the accumulator tank the gas passes through the expansion valve of the heat exchanger and the pressure is lowered to 10 or 15 pounds, or the pressure desired or necessary to carry the gas through the field lines. The refrigerating effect obtained by this method is surprisingly small, and although many coils using this principle for cooling have been installed, few of them lower the temperature of the high-pressure gas enough to be of material benefit. In certain standard installations one coil of this type is installed with each high-pressure unit, the inside pipe of the coil having a diameter of 3 or 4 inches, and the outside 6 or 8 inches. The length is usually approximately 80 feet, and either the straight-line or return-bend type is used. After leaving this coil the gas is returned to the field for use on the lease, or sold to commercial gas companies.

#### COILS USED IN CONJUNCTION WITH EXPANSION ENGINES.

A study of Table 5 will give the reader an idea of the great variety of types and sizes of coils used as heat exchangers or refrigerators in conjunction with expansion engines and valve expanders. The principle is the same in all types. The cold expanded gas passes through one of the pipe members of a double pipe-interchanger while the high-pressure gas from the water-cooled coils passes through the other member. At the end of the coil in which the high-pressure gas is treated, an accumulator tank or drip collects the condensed vapor as in the water-cooled coils.

Of the plants listed in Table 5, No. 6 used the smallest size of pipe to form the double-pipe coil, 2-inch pipes inside of 3-inch.<sup>a</sup> The cooling effect in this coil is rapid, but a small quantity of moisture in the gas will tend to freeze the coil and stop the flow, necessitating

<sup>a</sup> The 1 $\frac{1}{2}$ -inch in 2-inch coil mentioned in Table 5 as being part of plant 11 has been abandoned in favor of a larger double coil.

continual watchfulness and more or less thawing to do. This particular coil is protected to some extent from water vapor by first passing the gas through two other double coils, 4-inch pipe in 6-inch, which are cooled by the expanded gas from the small 2-inch in 3-inch coil. In the larger coils the gas is cooled only to such a temperature that the greater part of the liquid condensed is water. The cooling area varies between 0.15 square foot and 3.70 square feet per 1,000 cubic feet of gas treated, and averages 0.563 square foot.

TABLE 5.—Data on double-pipe coils or heat exchangers used at various plants.

Plant No.	Type of coil or exchanger.	Number of coils.	Size of pipe.			Length of single coil.	Total length of coil.	Radiating area.	
			Number of pipes.	Inside diameter.	Outside diameter.			Total.	Per 1,000 cubic feet of gas treated daily.
				Inches.	Inches.	Feet.	Feet.	Sq. ft.	Sq. ft.
1.....	Tubular.....	2	50	2	36	18	.....	940	0.940
2.....	Straight line.....	1	1	8	16	80	80	167	.372
3.....	do.....	2	1	8	12	60	120	250	.200
4.....	Return bend.....	2	1	4	6	50	200	210	.....
6.....	do.....	120	1	2	3	20	2,400	1,257	.590
7.....	Special straight line.....	14	5	2½	12½	100	1,400	4,575	.610
9.....	Straight line.....	5	1	8	12½	100	500	1,050	1.05
10.....	Special.....	2	1	12½	24	40	80	262	.349
11.....	Straight line.....	3	1	4	6	100	300	315	.....
12.....	Return bend.....	96	1	1½	2	20	1,920	630	.630
13.....	do.....	6	1	4	6	80	480	502	.714
14.....	do.....	2	1	2½	5	80	160	105	.....
15.....	Return bend.....	2	1	4	6½	80	160	167	.272
16.....	do.....	2	1	4	8	90	180	190	.750
17.....	do.....	2	1	3	8	80	160	130	.173
19.....	Horizontal tubular.....	4	52	1½	30	16	832	326	.181
20.....	Vertical tubular.....	2	72	2	30	12	1,728	900	.600
21.....	do.....	1	72	2	30	12	864	450	.450
30.....	Return bend.....	6	1	2	4	40	240	126	.168
32.....	do.....	20	1	3	5	40	800	630	.210
33.....	do.....	4	1	4	6	100	400	420	.233
51.....	do.....	1	2	2	10	40	40	42	.170
55.....	do.....	3	1	4	6½	80	240	189	.150
76.....	do.....	12	1	4	8	40	480	500	.250
77.....	do.....	4	1	4	8	40	160	167	.420
78.....	do.....	4	1	4	8	40	160	167	3.70
79.....	do.....	1	1	4	6	80	80	84	.330

From the 2-inch in 3-inch coil the sizes range through nearly all possible combinations up to 12½-inch inside of 24-inch. As the pipe sizes become larger, cooling is slower. The cooling effect in the last-mentioned coil is so sluggish that it is doubtful whether the coil can be considered efficient. The tubular type of heat interchangers, such as are used in plants 19, 20, and 21, either horizontal or vertical, are built in the form of a tubular boiler, the cold gas being either in the main drum shell or in the tubes. This type of interchanger has not been as satisfactory as some of the double-pipe coils.

It seems that the length of time and the necessary intimate contact between the gas and the tube surfaces is not obtained, and radiation is incomplete, the high-pressure gas being discharged at too high and the expanded gas at too low a temperature. Both the high pressure and the expanded gas is thought to follow channels through the drum

and tubes and form eddies or dead spaces, leaving some parts of the tubes and shell inactive. In this type of interchanger a series of baffles in both the tubes and shell might give the desired result, as has been done in refinery practice. This type of cooler is used at a number of plants as a water condenser and as a unit in conjunction with double-pipe coils of smaller size.

The coil used at plant 7 (see Table 5 and fig. 7) is of special straight-line construction, consisting of five  $2\frac{1}{2}$ -inch pipes inside of a  $12\frac{1}{2}$ -inch casing 100 feet long. This type of interchanger is not uncommon in refinery practice, being used for the interchange of heat between oil coming from and going to stills, but in the compression-plant industry its adaptation is unique. There are 14 units of this type in the entire battery. The high-pressure gas from the water-cooled coils is divided by a header and passes in parallel through the

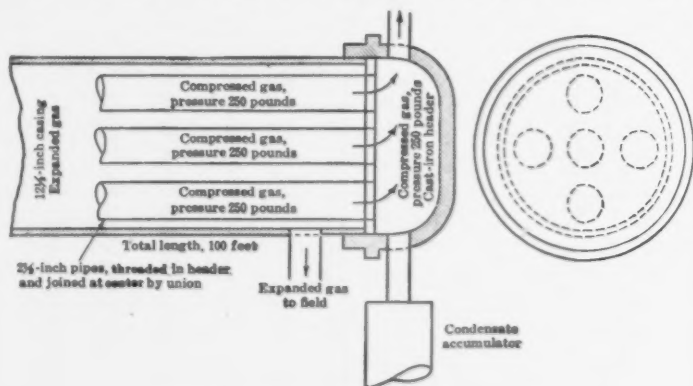


FIGURE 7.—Sections of special straight-line double coil.

$2\frac{1}{2}$ -inch pipes of four of the units, at the end of which it is collected by a header, and again divided in the same way, passing in parallel through the  $2\frac{1}{2}$ -inch pipes of the remaining 10 units of the battery of 14. At the end of each unit a drip (see fig. 7) collects the condensate formed.

From the discharge header at the end of the group of 10 exchangers the gas goes directly to the expansion engine. The engine exhaust, or low-pressure cold gas, is returned to the 10 interchangers, passing through them in parallel in the  $12\frac{1}{2}$ -inch shell or outside pipe countercurrent to the high-pressure gas. After passing through the 10 units the gas is collected in one main or header and is again divided and passes in parallel through the outside casings of the other four units, again countercurrent to the high-pressure gas.

By using the 14 interchangers in two sets or batteries the gas is cooled in two stages, and by the counterflow system the coldest expanded gas is brought into contact with the coldest high-pressure

gas, thus making a gradual and complete interchange of heat. The expanded gas, on leaving the battery of four coils, has been raised to approximately the temperature of the high-pressure gas from the water-cooled coils, and the high-pressure gas traversing the inside pipes is brought to the lowest possible temperature by being circulated in contact with the coldest expanded gas after it has radiated a considerable portion of its heat to the partly warmed, expanded gas in the unit of four interchangers. Of the total plant production 10.4 per cent is credited to this system of cooling. These coils are not protected by a building, but are set well above the ground and housed in wooden boxes filled with sawdust, which covers the outer pipe fully 12 inches on all sides.

Plates VIII, A, and IX show views of the coils and expansion sets taken at a plant which the writer was fortunate enough to visit shortly after the installation of the expansion engine and before the cork insulation of the pipes had been completed.

#### INCREASE IN PRODUCTION DUE TO COOLING BY EXPANSION.

In Table 6 are recorded the percentages of total production and the gravities, in °B., of the fractions of condensate collected at the different stages in accumulator tanks in plants using expansion engines and keeping records of such data. The table shows that the percentage of condensate credited to expansion units varies between 10 and 50 per cent, except at plant 76, at which all of the condensate is collected in the accumulator tank after the cooling by expanded gas is completed. This case was cited before, and is undoubtedly due to the fact that the gas is forced to travel upward through the water-cooled coils, whereas the natural flow of any condensate formed would be downward. Apparently the condensate is absorbed by the gas and precipitated later in the double-pipe interchangers cooled by expanded gas.

TABLE 6.—Percentages and gravities of condensate collected in various accumulator tanks in plants using expansion engines.

Plant No.	Condensate produced from—					
	Low-pressure coil.		High-pressure coil.		Expansion coil.	
	Per cent.	Gravity, °B.	Per cent.	Gravity, °B.	Per cent.	Gravity, °B.
3.....	33	.....	60	79	7	95
4.....	15	.....	60	.....	25	.....
6.....	17.6	63.8	32.7	78	a 49.7	96
7.....	24.6	60	65	65	10.4	.....
9.....	26	60	42	80	22	90
11.....	.....	67	.....	84	.....	93
17.....	30	57	50	71	20	80
32.....	.....	.....	.....	.....	10-15	95
33.....	40	70	35	80	25	100
76.....	.....	.....	.....	.....	a 100	76-82

a No condensate in water-cooled coils.

## FIELDS IN WHICH EXPANSION UNITS ARE USED.

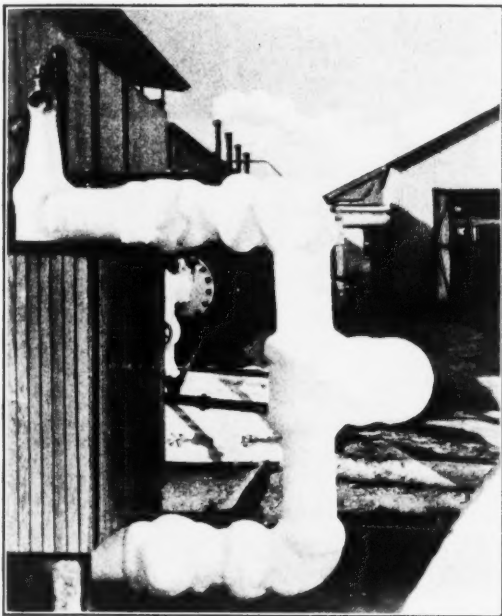
In the eastern fields, where much of the gas treated contains little or no fixed or true gases, being almost entirely composed of vapors of the higher hydrocarbons, the use of extremely low temperatures is of little or no benefit, and expansion engines and coils have not, in any plant known to the writer, been installed.

Mid-Continent practice, taken as a whole, does not include expansion engines as a part of the usual installation; expansion sets are, however, being adopted by some operators building new plants at the present time as a part of the original plant design. Two plants (Nos. 32 and 33) visited by the writer in Oklahoma had expansion engines and coils in service, both being in the Glenn pool. The operators of these plants stated that of the total production 10 to 25 per cent was directly due to cooling by gas expanded in engine cylinders, as shown in Table 6. The cooling area of the double-pipe heat interchangers used in the two plants averages 0.22 square foot per 1,000 cubic feet of gas treated, which is less than one-half the average area used in California practice.

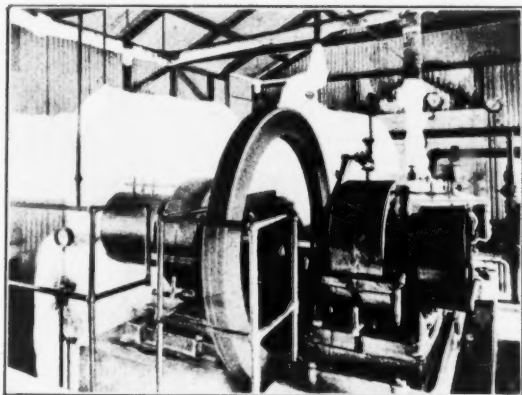
In the Caddo, Louisiana, field one company operating three compression plants uses expansion units and coils in each plant.

## EXPANSION ENGINES IN CALIFORNIA FIELDS.

The widest range of development in the installation of heat interchangers and the use of expansion engines is in California practice. At plants 3, 4, 6, 7, 9, 11, and 17 in the various California fields, 7 to 50 per cent of the total production is from expansion units, as shown in Table 6. It is generally figured in these fields that 25 per cent of the production is due to the expansion treatment. A plant in the Fullerton field treating 2,500,000 cubic feet of gas daily produced 3,000 to 3,200 gallons of condensate with a gravity of 72° B. before the expansion unit was put into operation. The expansion unit increased the daily production to between 4,000 and 4,300 gallons of condensate with a gravity of 80° to 84° B., or about 25 per cent of the total yield. The radiating areas in the heat exchangers used in California plants (see Table 6, plants 1 to 21) vary from 0.20 to 1.05 square feet per 1,000 cubic feet of gas treated daily. A radiating area large enough to warm the cold or expanded gas to the temperature, as nearly as practicable, of the high-pressure gas from the water-cooled coils is all that is necessary, because any further increase in cooling surface, the two gases being brought to approximately the same temperature, has no effect. The proper area for each 1,000 cubic feet of gas to be treated daily is a factor that can be obtained only by experiment at each plant, unless the designer has had experience in the particular field and with the particular gas



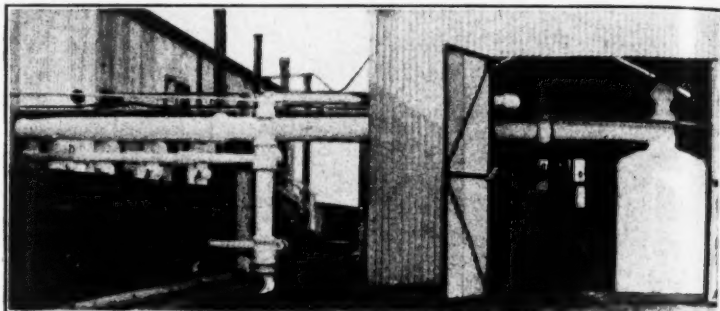
A. END OF HORIZONTAL TUBULAR COOLER, TYPE USED IN PLANTS 19, 20, AND 21.



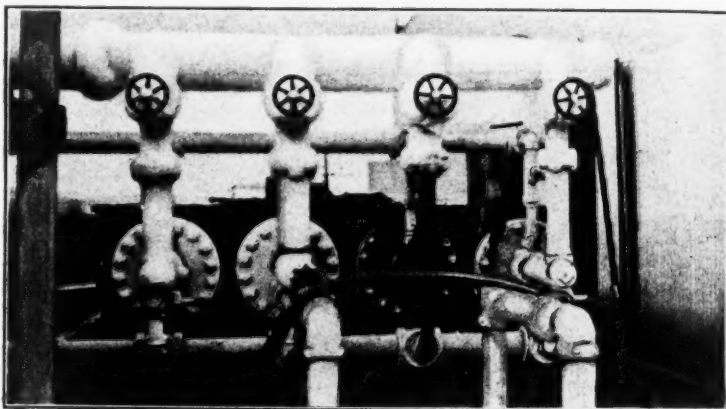
B. TWO-STAGE EXPANSION ENGINE IN COMPRESSION PLANT.

Note ice on accumulator tank and piping.

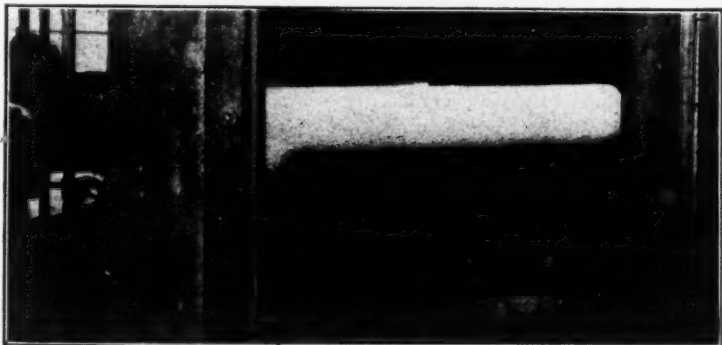




A. EXPANSION-EXHAUST ACCUMULATOR TANK AND PIPING. TANKS SHOW 2-INCH COATING OF FROST. TEMPERATURE OF GAS WAS BELOW  $0^{\circ}$  F.



B. END OF DOUBLE-PIPE COILS AND INTAKE MANIFOLD FOR EXPANDED GAS.



C. HEADER FOR EXPANDED GAS. CORK INSULATED INTAKE, PIPES EXPOSED TO AIR.

to be treated, or has data on the area used and the efficiency obtained at another plant already at work in the same field and treating the same gas.

#### TEMPERATURES OBTAINED FROM GAS EXPANSION.

The temperatures produced by heat exchange on high-pressure gas vary in practice from  $-17^{\circ}$  to  $+65^{\circ}$  F., or between  $75^{\circ}$  below and  $20^{\circ}$  F. below atmospheric temperature, as shown in Table 4 (p. 41). The best temperature to use in a given plant depends, as does the ultimate high pressure used, on the characteristics of the gas and the product desired, also on the efficiency of extraction and temperature previously obtained in the water-cooled coils. As the condensation of vapors depends on both temperature and pressure, in accordance with the physical laws of gases, at a given pressure there is some critical temperature below which it is useless to cool the gas, as Burrell<sup>a</sup> has demonstrated in the laboratory method of determining the quantity of condensable vapors in any given gas. The method of laboratory test uses only atmospheric (14.4 pounds at an elevation of 600 feet) pressure, and the extremely low temperature of  $115^{\circ}$  C. below zero, which is equal to  $175^{\circ}$  F. below zero.

At this temperature all of the propane and the butane are liquefied, which in compression practice is neither practicable nor desirable, because these two hydrocarbons are so volatile at atmospheric temperatures and pressures as cause them to weather out of plant products to a large extent, if not entirely. As a portion of each condensable hydrocarbon is precipitated and taken out of the gas, the pressure necessary to condense the remaining portion at a constant temperature rises, in accordance with the law of partial pressures. Or, with the pressure remaining constant, the temperature must be reduced to precipitate the remaining portion of that particular vapor fraction. Conversely, if at a given pressure any condensable constituent would be entirely precipitated when the gas reached the critical temperature of that fraction, the composition of the gas would be simplified and the precipitation of the other condensable fractions more complete at the same pressure. This has been demonstrated in practice in a plant using a maximum pressure of 250 pounds, and a temperature as low as  $10^{\circ}$  F. below zero at the discharge of the high-pressure coil, which was cooled by expanded gas. (See Pl. IX, A.) The condensate collected in the tank at the end of the coil contained more than 1 per cent of water; a small percentage of water was also found with the lightest condensate precipitated at the exhaust of the second stage of the expansion engine. (See Pl. VIII, B.) If water vapor is retained through all of the steps of compression and

<sup>a</sup> Burrell, G. A., and Jones, G. W., Methods of testing natural gas for gasoline content: Tech. Paper, 87, Bureau of Mines, 1916, p. 26.

cooling, as demonstrated in the plant just cited, it is probable that portions of all the hydrocarbon fractions are also. The points to be determined in any plant are the quantity of such vapors being lost and the temperature necessary to condense them as well as the value of the product and the cost of an installation to obtain the required results.

The value of the condensate obtained will depend on the quantity that can be marketed, and if excessive pressures are used, the product may be so light and volatile as to be of little value. A proper relation between pressure and temperature will in all instances yield the maximum marketable condensate from any given gas, and this relation can be found only by trials and tests made at each plant. In the plant cited above, the product obtained in the accumulator at the expansion engine exhaust had a gravity of 105° B., and probably consisted principally of butane, with small proportions of the other higher hydrocarbons and of water. The gas in this accumulator had a temperature of 40° F. below zero and a pressure of 10 pounds, as the result of the two stages of expansion. It was found that in the expansion cylinder of the engine, the gas had reached a temperature lower than 100° F. below zero before being exhausted. The quick rise in the temperature of the gas between the cylinder and the tank, which was connected to the exhaust by a short insulated pipe, is probably due to two factors, radiation from the cylinder walls and the latent heat of vapors given out on condensation.

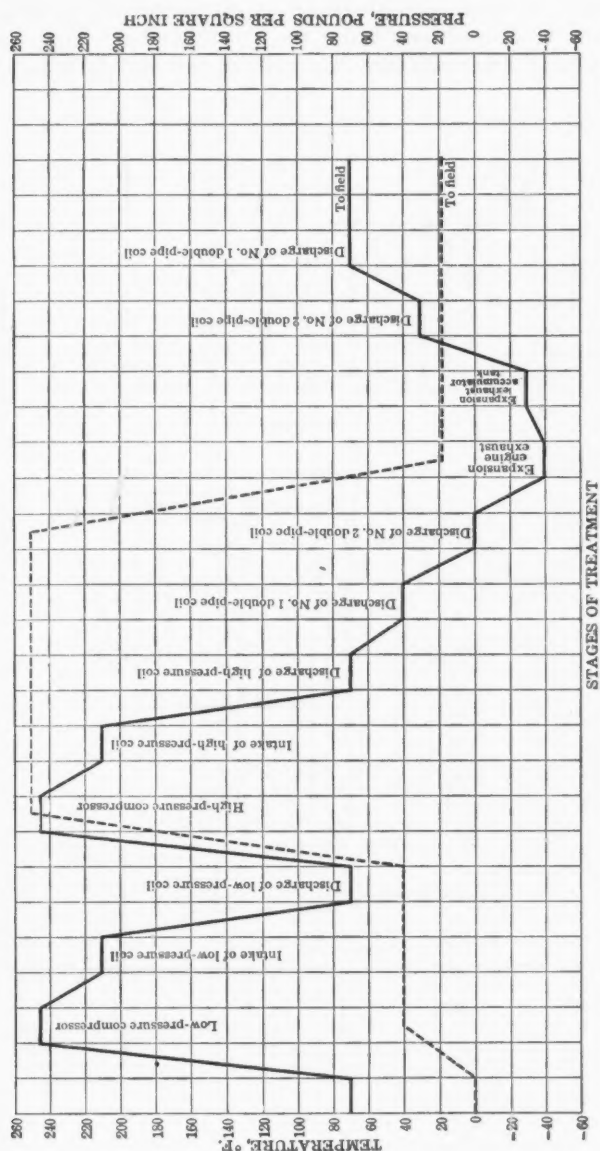
In a plant in Oklahoma, in experimenting with expansion units, it was found that the desired low temperatures could not be obtained. So little vapor was precipitated in the coils ahead of the expansion unit that in expanding the gas the latent heat given up by the condensing vapors immediately reheated the expanding gas to 20° F. The remedy for a condition of this kind would necessarily have to be found either in the pressure or water cooling to which the gas was being subjected.

#### TEMPERATURE AND PRESSURE CHANGES IN A COMPRESSION PLANT.

Figure 8 shows diagrammatically the changes in both pressure and temperature to which gas is subjected in average compression-plant practice. The vertical coordinates show temperatures in degrees Fahrenheit for the solid line or temperature curve, and pressures in pounds per square inch for the dotted or pressure curve. The horizontal coordinates represent the different stages of treatment at which the changes of pressure and temperature occur.

#### FLOW SHEET OF A COMPRESSION PLANT.

Figure 9 shows the gas flow diagram of a 2-stage compression plant using single-stage expansion, connected with two sets of expanded-gas cooled coils in series. The gas intakes and discharges of the com-



STAGES OF TREATMENT

FIGURE 8.—Diagram showing the changes in temperature and pressure of gas in compression-plant practice. Dotted line is pressure curve, solid line is temperature curve.

pressors and the water-cooled coils are shown connected in manifold, this system of connections being the most flexible. With valves properly placed, any unit, part of a unit, or coil may be cut out for

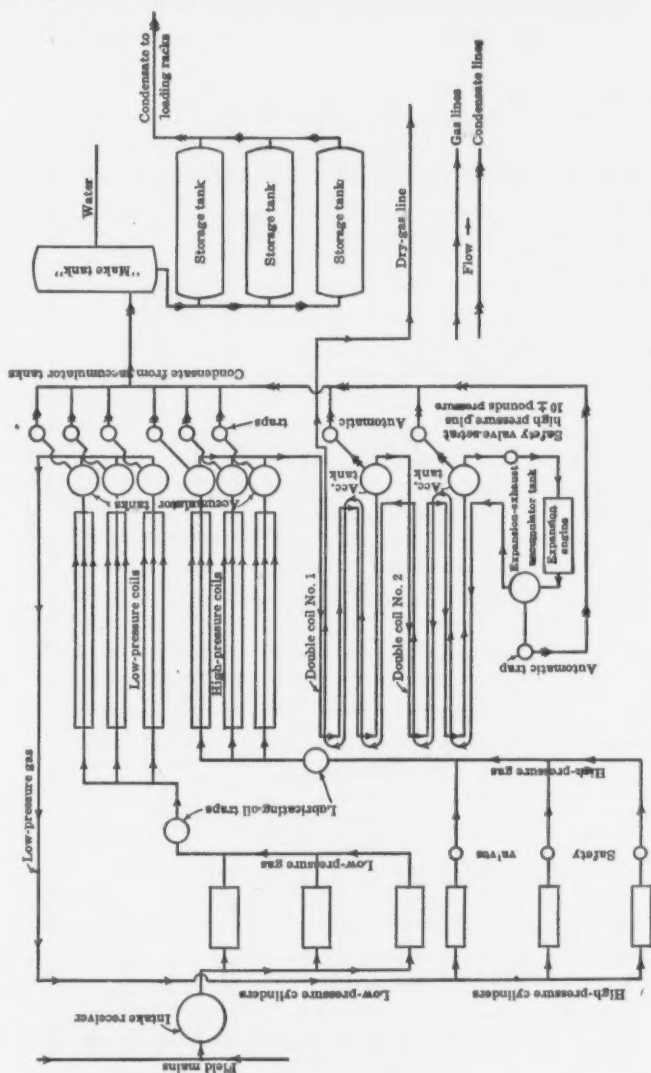
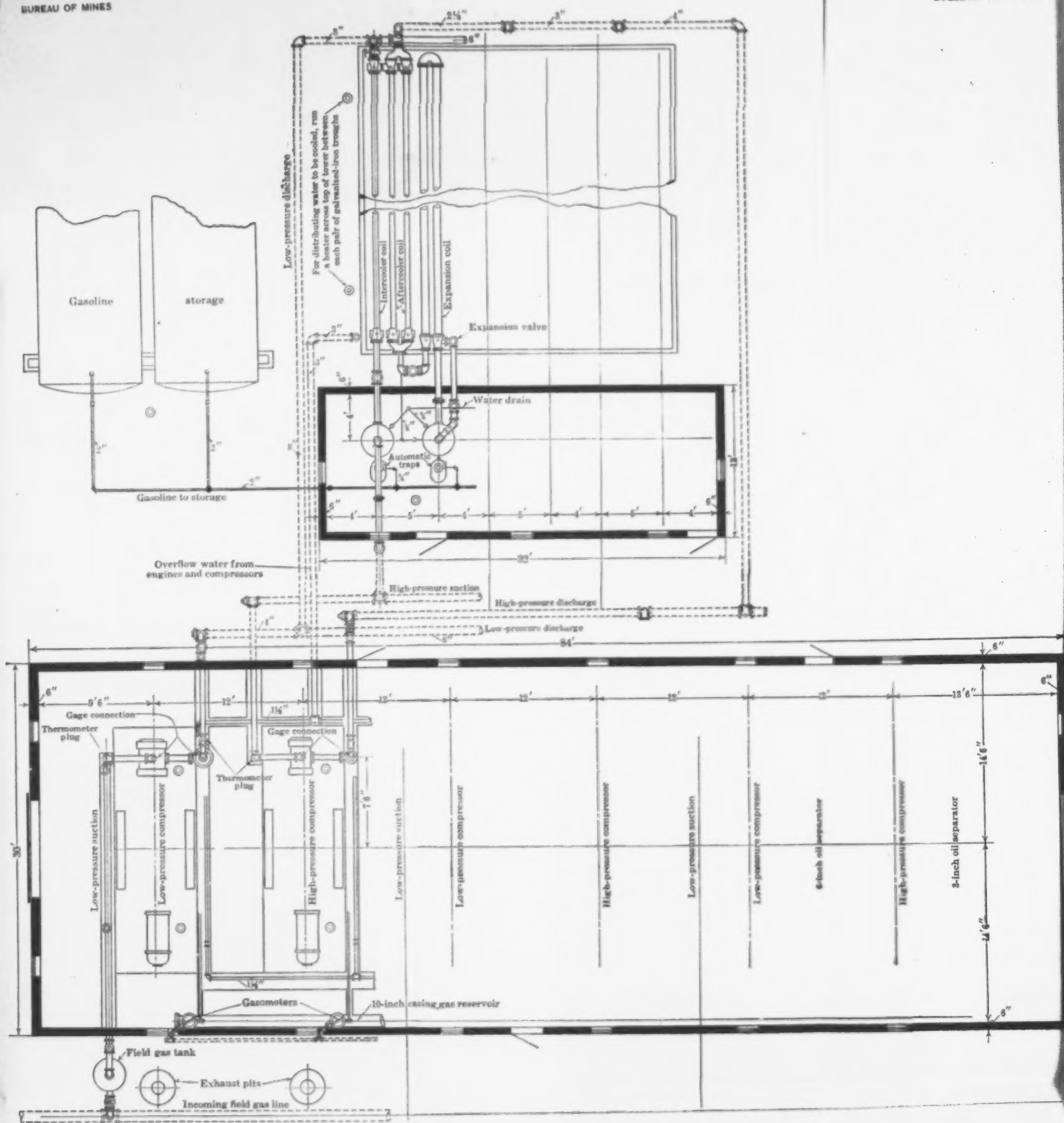
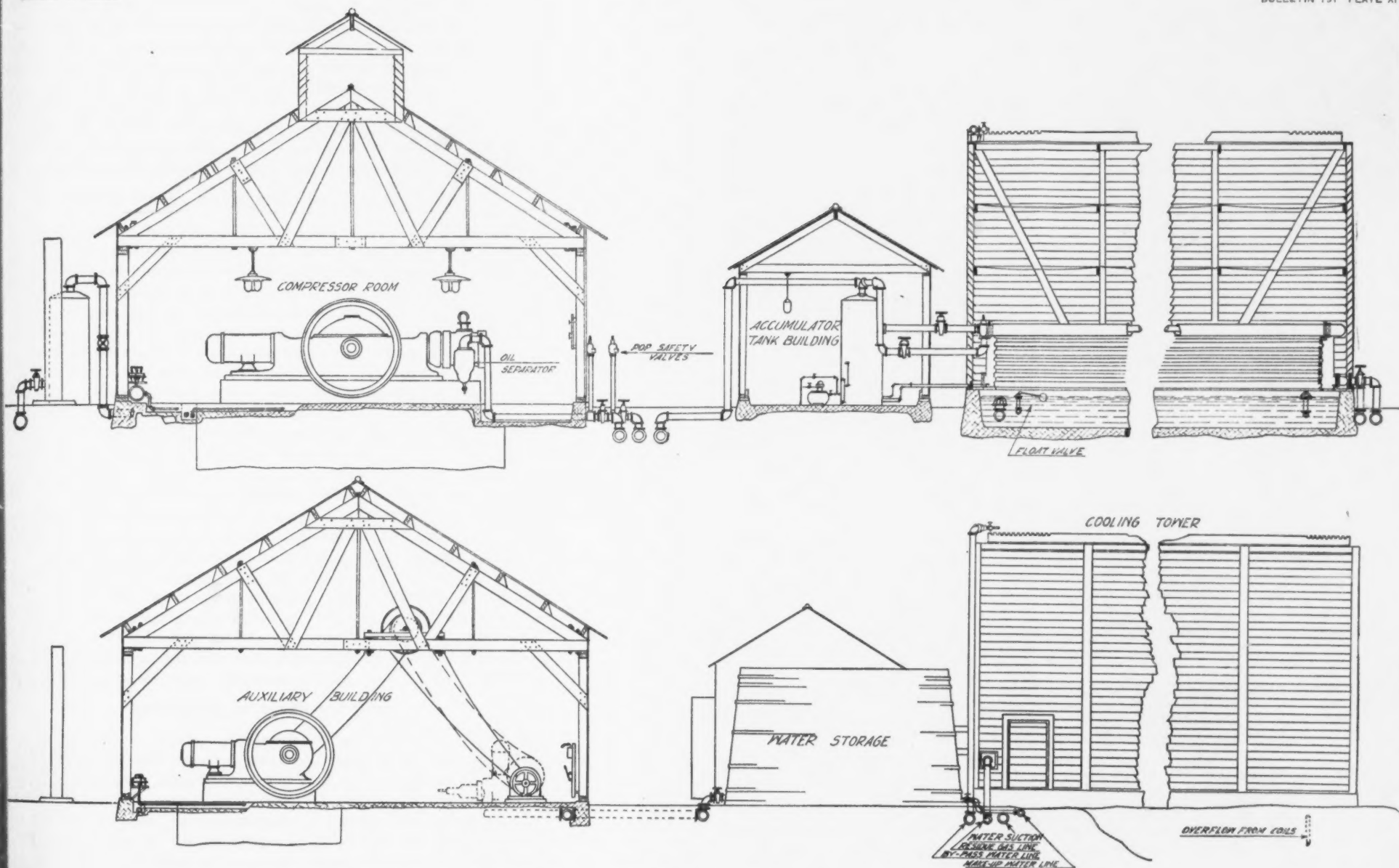


FIGURE 9.—Flow sheet of compression plant using 2-stage compression and single-stage expansion.

inspection or repairs without shutting down any other part or stopping plant operations, the work of the inactive unit being taken up by a small overload on the other units.





ELEVATION OF COMPRESSOR, AUXILIARY BUILDINGS, AND COOLING TOWER OF PLANT SHOWN IN PLATE X.



A single-stage expansion engine is shown connected with two double-pipe coils in series; if two stages of expansion were being used each of the double-pipe coils would use the gas expanded in one stage and be so connected that the gas from coil No. 1, using first-stage expanded gas, would return to the second-stage expansion cylinder, from which it would be returned to coil No. 2 to further cool the high-pressure gas.

Plates X and XI show plans and elevations of a typical direct-connected compressor plant. The low-pressure and the high-pressure cylinders are operated independently by separate gas engines.

#### USE OF POWER DEVELOPED BY GAS EXPANSION.

At all plants where expansion units are used, the development of power by the expansion of the gas has been a secondary consideration. In a number of plants power is developed only to give resistance to the expanding gas, as in a plant using a pump under a back pressure of 150 pounds, and in another plant compressing air to 40-pound pressure, only to release it to the atmosphere through a small valve set to hold the required back pressure on the natural gas.

In plant 17 the compressor end of the expansion unit holds a vacuum on the double-pipe coil and on the exhaust of the power cylinder, and delivers the gas at a pressure sufficient to return it to the lease. (See Pl. XII, A.) This use of the power developed is not uncommon, although usually the compressor suction is above atmospheric pressure. At plant 76 the power developed from expanding the gas in two single-stage cylinders working in duplex is used to compress air in two stages to a pressure of 85 pounds, to be used in air lifts in pumping oil wells. Other plants use the power generated by single-stage expansion units, as in the tandem compressor, or by two-stage expansion units, as in the cross-compound machines, to drive one of the two-stage compressor units connected in parallel with the other compression cylinders, both at the intake and the discharge. A compressor used in this way may, as at plants 6 and 14, take gas from and deliver it to the manifolds used for the intake and discharge of the other compression units.

#### EFFICIENCY OF EXPANSION UNITS.

The amount of power developed in an expansion engine as compared with the amount used in compression is very low, probably not more than 5 or 10 per cent in average plants. This condition is to be expected because of the energy loss through dissipation of heat, the consumption of power in operating the piston and valve in the expansion cylinder, and the reduction in pressure through losses of gas and vapor by condensation and leakage during transmission through pipes and cooling systems.

An exceptional instance of power developed in an expansion unit was noted at a California plant. Tests showed that between 25 and 35 per cent of the power used to compress the gas was developed by the expansion engine, which used in its power cylinders all of the gas compressed in two stages of expansion, with heating between the two expansion cylinders. The plant compressed 1,900 cubic feet of gas per minute, of which 690 cubic feet was compressed in the compressor end of the expansion engine.

The gas entering the high-pressure cylinder of the expansion engine at a pressure of 250 pounds had a temperature of 5° F. below zero; the discharge pressure was 50 pounds. The gas was then passed through double-pipe coils and heated to 50° F. before it entered the low-pressure power cylinder. From this cylinder it was exhausted at a pressure of 10 pounds and a temperature of 40° F. below zero. The gas from the second expansion exhaust was used for cooling the high-pressure gas, and was then discharged from the plant at 57° F. A measurement of the temperature in the low-pressure expansion cylinder indicated a temperature of 140° F. below zero.

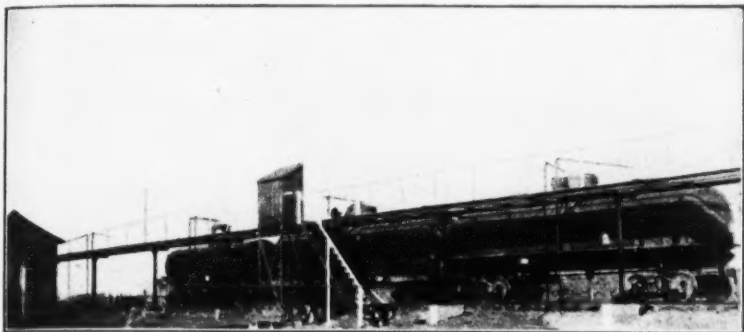
If a more efficient return of power were made an object, more power could be developed by heating the high-pressure gas, after it leaves the double-pipe interchanger, in an interchanger with the hot gas from the high and the low pressure compression cylinders. If desirable the gas could be further heated in a double-pipe interchanger by the exhaust from the power cylinder of the gas engine, or in a tubular interchanger such as is used for preheating boiler water with exhaust gases.

Heating the compressed gas before it enters the valve chest of the expansion cylinder would also tend to reduce freezing at that point, thus reducing the power used in moving the valve mechanism.

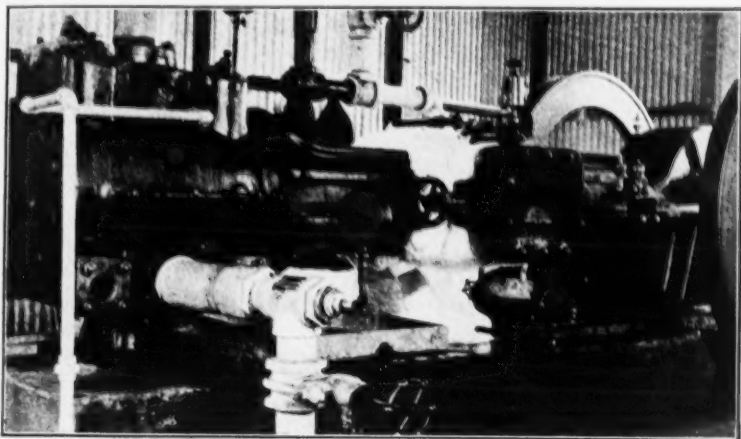
To obtain as low temperatures of the expanded gas, with preheating as without preheating, more power would have to be developed and used by the expansion unit. This could be accomplished by added expansion units, by increasing the load, or by running the compressor faster at the same pressure, thus increasing the total volume of gas compressed in a given unit of time.

#### EXPANSION FOR POWER ALONE.

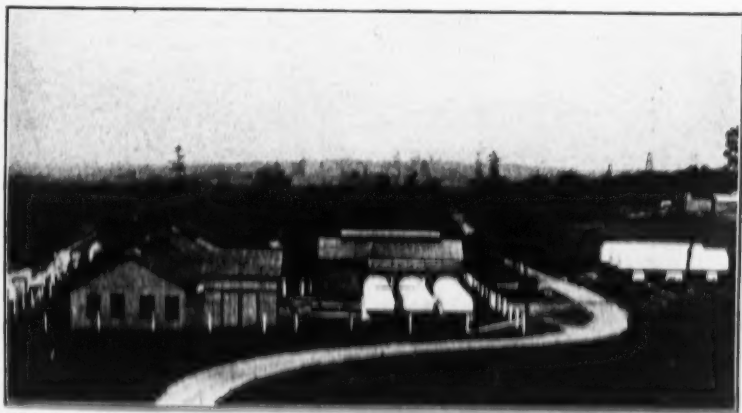
In expanding compressed gas for power purposes only, and not for refrigeration, as is contemplated in an eastern plant, preheating the gases by either the hot compressed gas or the engine exhaust would be necessary in order to make the installation a commercial success. Using a relatively small quantity of gas at a low temperature (60° F.) would hardly pay in power delivered, as compared with a gas engine using gas worth 15 cents or less per 1,000 cubic feet.



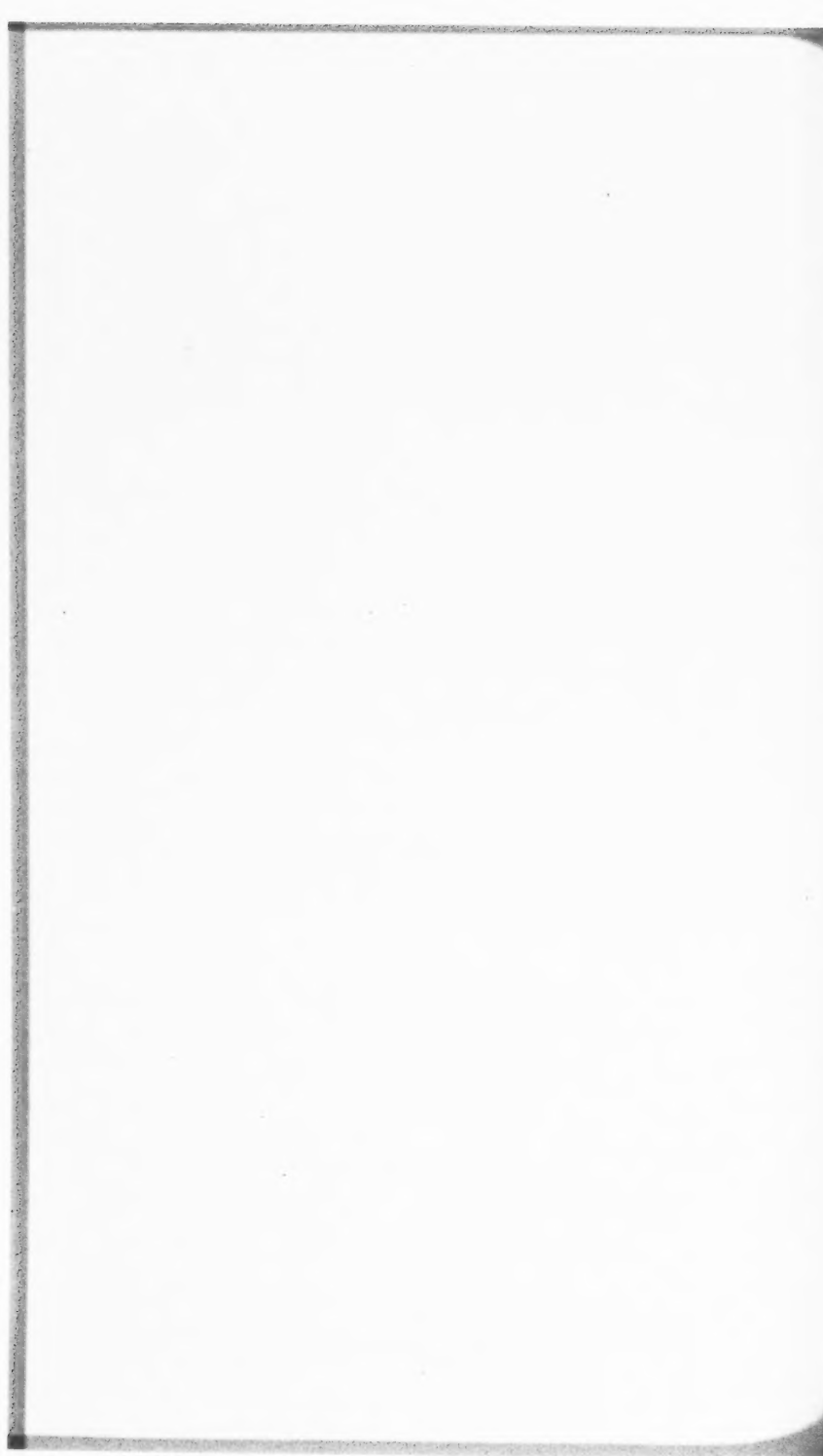
A. LOADING RACK FOR TANK CARS AT BLENDING STATION.



B. SINGLE-STAGE COMPRESSOR USED AS EXPANSION ENGINE PUMPING GAS TO FIELD AT 60 POUNDS PRESSURE.



C. COMPRESSION PLANT, SHOWING HORIZONTAL TYPE OF "MAKE" TANKS IN MIDDLE FOREGROUND, AND OF ACCUMULATOR TANKS, AT RIGHT.



**USES MADE OF TREATED GAS.**

With the passage of the gas through the coils of the expansion unit, the treatment for recovery of gasoline is finished.

Gas used for power to run the compression plant, either in gas engines or under boilers, is universally taken from the treated gas, the rest being returned to the lease or pumped into the lines of a commercial gas company. The lease or contract usually stipulates that gas used for power in the compression plant is to be taken from the treated gas at no cost to the lessee.

**GAS USED PER HORSEPOWER IN COMPRESSION UNITS.**

The quantity of gas necessary to operate a gas engine will vary from 9 to 18 cubic feet per horsepower-hour, depending on the size, type, and age of the engine and the care given it. Boilers in a steam plant require 40 to 120 feet per horsepower hour. A plant having six 80-horsepower, direct-connected, horizontal, 2-cycle gas engines used between 12 and 14 feet. The engines had been in service two years and had been well cared for. The large 450 to 1,100 horsepower, horizontal, direct-connected, tandem, double-acting, 4-cycle units will use as little as 9 feet and the 150 to 200 horsepower, vertical, 4-cylinder, 4-cycle, belted units will use 10 to 14 feet per horsepower hour.

Oliphant<sup>a</sup> gives the following table showing the average amount of natural gas required to operate gas engines or to supply a steam-engine plant using natural gas as fuel under the boilers in cubic feet per indicated horsepower hour:

*Cubic feet of natural gas required per horsepower-hour to drive a gas engine or steam plant.*

	Cu. ft.
Large gas engine, highest type.....	9
Ordinary gas engine.....	13
Triple-expansion condensing steam engine.....	16
Double-expansion condensing steam engine.....	20
Single-cylinder steam engine with cut-off.....	40
Ordinary high-pressure steam engine without cut-off.....	80
Ordinary oil-well pumping steam engine.....	130

From 10 to 12 cubic feet of air is necessary for the complete combustion of 1 cubic foot of natural gas.

**PERCENTAGE OF GAS RETURNED AFTER CONDENSATE AND GAS USED FOR POWER IS DEDUCTED.**

The reduction in the volume of the gas from treatment by the compression process is unaccountably large. As has been stated, in treating gas from old wells that have been gas-pumped for years and are held at high vacuums, practically all of the gas disappears in one stage or another of the treatment, often not enough being left to run the engines.

<sup>a</sup> Oliphant, F. H., Catalogue of metric metal works, 1914, p. 42.

Gas produced under natural pressure in the newer fields contained a much higher percentage of fixed gases, hence the quantity of residual gas, after condensate and gas used for power have been deducted, reaches 70, or, in some plants, it is claimed, 80 per cent of the total wet gas entering the plant. Exact figures on the quantities of residual gas are seldom kept in compression plants, it being a matter of little importance in most fields. It appears, however, from the figures that the writer was able to obtain that in plants treating gas yielding  $1\frac{1}{2}$  to 2 gallons of condensate per 1,000 cubic feet the net amount of gas left after treatment and deducting gas used as fuel, would average approximately 66 per cent of the total amount entering the plant. As the gas being treated increased in gasoline content the quantity of residual gas became less and less until it was not sufficient to furnish power for compression.

#### GAS USED FOR POWER AND TO FORM CONDENSATE.

Between 10 and 15 per cent of the total quantity of gas treated is required for power purposes, depending on the type and the efficiency of the engines driving the compressors. Burrell<sup>a</sup> states that it takes, on an average, 35 cubic feet of vapor to produce 1 gallon of condensate, or 3.5 per cent for each gallon produced from 1,000 cubic feet of gas, or if 3 gallons of unweathered product is made it will account for 10.5 per cent of the total gas entering the plant. The condensation of water vapor during the treatment will also account for a certain percentage of the total volume. The gas and vapor unaccounted for in the ways noted must be lost by leakage in pipes and machines during the various stages of plant operation, and by weathering of light fractions.

#### FOREIGN CONSTITUENTS IN NATURAL GAS.

##### AIR.

Besides water vapor, a number of gases not of the hydrocarbon groups are often found in natural gas. Air, if present, may be a constituent of gas from wells under high vacuums, but is usually due to inward leakage, either in the well casing or in lines transmitting the gas to the plant. At a plant visited in the Shallow pool of Oklahoma, the writer was informed that the gas being treated contained 30 per cent air. The area from which the gas was being drawn covered 12 square miles, making the use of long gathering lines and many vacuum pumps necessary, which probably accounts for the extremely high air content.

<sup>a</sup> Burrell, G. A., Seibert, F. M., and Oberfell, G. G., The condensation of gasoline from natural gas. Bull. 88, Bureau of Mines, 1915, p. 60.

**WATER VAPOR.**

Air always carries more or less water vapor with it, and this fact may account for part of the water precipitated with condensate. As most oils carry some water with them from the oil-bearing formations, it is natural to believe that some water vapor from this source would be carried into the gas, especially when the wells are being gas-pumped and low pressures maintained. The temperature of the oil and water under ground would also tend to allow water vapor to form and be held in the gas. In one instance, the oil coming from a certain well also producing gas had a temperature of 150° F. in the flow lines.

A California plant treating 2,500,000 cubic feet of gas daily produced water with the condensate at various points as follows:

*Gallons of water drained from various points at California plant in 24 hours.*

	Gallons.
From low-pressure accumulator.....	200
From high-pressure accumulator.....	50
From final double-pipe coil.....	25
From storage tank.....	65
Total.....	340

This quantity of water was equal to between 5 and 6 per cent of the condensate produced.

**CARBON DIOXIDE.**

The proportion of carbon dioxide in natural gas used in compression plants varies widely. As much as 30 per cent has been found in both the Mid-Continent and California fields. So large a proportion is unusual, but percentages up to 10 are not uncommon in California fields, and in some districts in Oklahoma.

Nitrogen is found in the natural gas in some districts, as noted by Burrell,<sup>a</sup> but was not found in gas fields visited and sampled by the writer, except as introduced into the gas with air.

**SULPHUR COMPOUNDS.**

Hydrogen sulphide or other gaseous sulphur compounds, usually called "sulphur gas," is found in many of the fields producing casing-head gas. However, only the gas from small areas of these fields contains sulphur in such quantities as to be a decidedly detrimental factor in treatment of gas for its gasoline content.

Plants in the southern Illinois field are troubled by sulphur compounds more generally than those in any other district as a whole. A plant in the Santa Maria and one in the Salt Lake field in California report sulphur trouble, but such contamination is local and is not characteristic of those fields as a whole.

<sup>a</sup> Burrell, G. A., Selbert, F. M., and Oberfell, G. G., The condensation of gasoline from natural gas: Bull. 88, Bureau of Mines, 1915, pp. 21-22.



**GENERAL EFFECTS ON COMPRESSION TREATMENT.**

The gases named, with the exception of hydrogen sulphide, are inert chemically through all the stages of the compression process. Physically they affect plant practice in two ways. They cut down the volume of productive gas treated or absorb power for which no return is possible; they complicate the problem of partial pressures by requiring higher pressures for the gas as a whole in order to bring any one of the condensable fractions to its critical pressure, thus again necessitating more power.

**EFFECTS OF SULPHUR AND METHODS OF REMOVAL.**

In the Lawrenceville district of southern Illinois the proportion of sulphur in the natural gas is so large as to be a decided detriment to treatment by compression. Beside destroying the pipes in cooling coils, so much of the hydrogen sulphide is dissolved in the condensate, either as a gas or as a liquid, that resort is had to steam distilling in order to free the condensate from this objectionable content. The odor of even small proportions is noticeable, making the product unsalable, and such gasoline, if used in motors, will attack the pistons and cylinders, causing pitting and roughness. By use of the steam stills in that district between one-third and one-half of the total plant product is lost as noncondensable vapor passing through the cooling coils after the stills.

The two California plants, mentioned previously, report no trouble with sulphur in the condensate, but do have trouble from the sulphur gas attacking and eating out cooling coils. At the plant in the Salt Lake field 2-inch steel pipes will often be eaten through, particularly at a low point in the coil, in 3 or 4 months. The plant in the Santa Maria field found that 2-inch steel pipe, costing 12 cents per foot (May, 1916), in the cooling towers lasted 6 months, and that wrought-iron pipes, costing 19 cents per foot at that time, lasted 13 months or more.

No compressor or engine trouble traceable to hydrogen sulphide gas was reported at any of the above plants, possibly because of the film of lubricating oil constantly protecting the pistons and cylinders.

The elimination of sulphur gas has long been a part of the treatment for purifying manufactured or artificial gas. The artificial gas made from coal or oil is passed through a scrubber containing iron oxide (common hematite iron ore). A chemical reaction takes place, the sulphur uniting with the iron to form iron sulphide, which is a solid at normal temperatures, thus removing the sulphur from the gas. When the iron becomes slow in its action, or so largely converted to the sulphide as to be inefficient in removing the sulphur, it is discharged and a fresh charge placed in the scrubber. The scrubbers are generally operated in pairs to allow one to be cut out

during periods of cleaning and charging. The discharged iron ore is thrown out on the ground, where it is oxidized by the action of the sun and the atmosphere, and again used as a fresh charge for the scrubbers.

The sulphur compounds originating in gas act chemically as an acid in much the same way as the acid fumes that are carried in still vapors in oil refining.

An eastern refinery which compresses the uncondensed still vapors and gases to further remove condensable fractions uses a series of water and caustic washes in scrubbing tanks to remove acid impurities, as described on page 68.

To overcome the action of sulphur gas which was eating out the high-pressure coils of a compression plant, Mr. D. L. Newton, general superintendent of the Hurley Smith Gasoline Co., of Los Angeles, Cal., designed and successfully operated a scrubber and cooler combined which removed the objectionable gases and also took the place of the high-pressure water-cooled coils.

Figure 10 shows the general design and method of operation of the scrubber. After this treatment the gas was refrigerated in double-pipe coils of usual construction without causing their destruction or forming incrustations of sulphur compounds.

The following data, regarding the operation of the scrubber, was also kindly furnished by Mr. Newton:

*Data on scrubber for removing sulphur.*

Capacity, 300,000 cubic feet per day at a pressure of 250 pounds.

Temperature of gas entering scrubber, 190° F.

Temperature of gas leaving scrubber, 78° F.

Temperature of water entering scrubber, 72° F.

Temperature of water leaving scrubber, 78° F.

Volume of water used per 24 hours, 15,000 gallons.

The water used in the scrubber, after being automatically trapped from the separator, was returned to the top of the cooling tower for cooling in the usual way. Owing to aeration and the lowered pressure, the greater part of the sulphur gas passed off into the air, the cooled water being returned to the scrubber by a pump at a pressure slightly higher than that at which the gas entered the scrubber.

### CONDENSATE.

#### LINE DRIP.

The first condensate produced in treating gas by compression is the small quantity of rather heavy and often discolored naphtha accumulating in the pipe-line drips. After this condensate has been collected and cleaned by filtering or distilling it is mixed with the balance of the plant product, giving the mixture a lower gravity and vapor tension and helping to stabilize the "wild" condensate from other parts of the plant.

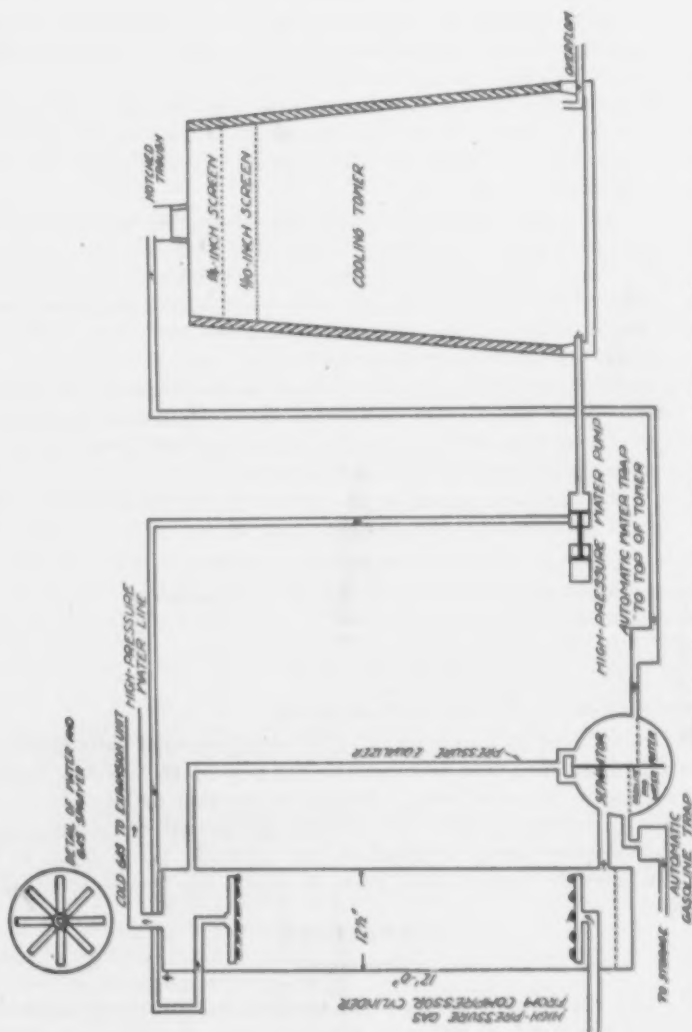


FIGURE 10.—Scrubber used to cool gas and remove sulphur compounds.

**CONDENSATE FROM LOW-PRESSURE COILS.**

The second condensate is that collected in the low-pressure accumulator tanks; its proportion to the whole product varies between nothing and 50 per cent, and in average plant practice between 10 and 30 per cent. The gravity varies around 60° B. and the vapor tension between 1 and 3 pounds. Such condensate makes an ideal motor fuel just as it comes from the coils, but is usually mixed before leaving the plant with the other products either in "make tanks" or in storage tanks, having the same tendency as the line drip to improve the product as a whole.

The following distillation represents approximately an average first-stage condensate as produced in California practice:

*Results of fractional distillation of first-compression naphtha (condensate).*

[Analyst, Paul W. Fritzman.]

Still charged with 500 c. c., at 62° B.; started over at 106° F.

Cut No.	Amount of cut.	Final temper- ature.	Gravity of cut.	Per cent.
	c. c.	°F.	°B.	
1.....	50	174	76.8	10
2.....	50	192	71.8	10
3.....	50	206	66.5	10
4.....	50	218	63.1	10
5.....	50	228	60.8	10
6.....	50	241	58.4	10
7.....	50	254	56.5	10
8.....	50	272	54.8	10
9.....	50	312	51.4	10
.....	16	352	.....	.....

Total amount distilled off and collected, 466 c. c.; final temperature, 352° F. Loss, 8 per cent.

Eastern or Mid-Continent products with these end points would have a specific gravity between 5° and 9° B. higher, but the sample distilled is fairly representative of the first-stage product of two-stage plants.

**CONDENSATE FROM HIGH-PRESSURE COILS.**

Next in the series of condensates collected is that obtained from the gas under the maximum pressure used in any given plant and at temperatures developed by water cooling.

In average plant practice the condensate precipitated and collected at this point represents the principal bulk of the total recovery, seldom being less than 30 per cent of the total product even in plants using expansion units, and at times reaching 100 per cent, as in all single-stage practice and in some two-stage installations. At plant 22, which compressed the gas to 300 pounds in two stages and cooled it to 60° F. in the high-pressure coils, all the condensate was produced at this point, the product having a gravity of 96° B.

The specific gravity of the high-stage condensate is between 65° B. and 100° B., averaging in eastern fields approximately 85° B., in Oklahoma 78° B., and in California 72° B.

As formed in the accumulator tank this condensate is "wild," owing to the absence of low-gravity fractions, to dissolved gas, and to hydrocarbons that can be held as liquids only under high pressure at the temperatures attained in the water-cooled coils. As the pressure is reduced by the automatic traps or in the transfer from accumulators to the "make" or storage tanks, the lighter fractions and dissolved gases immediately start coming off and build up pressure in the tank containing them or escape to the atmosphere. For these reasons the condensate from high-pressure accumulators is usually discharged to tanks containing the heavier fractions precipitated in other coils and is often blended in there, or before it reaches the storage tanks.

#### CONDENSATE FROM EXPANSION COIL.

Table 6 (p. 45) gives the gravity and percentage of this condensate as obtained in plants using expansion units. The condensate has much the same physical characteristics as the condensate from high-pressure water-cooled coils and is handled and treated in the same way.

#### CONDENSATE FROM EXPANSION EXHAUST.

As stated and discussed under expansion units, plant 6 collects a high-gravity (105° B.) condensate in an accumulator close-connected to the exhaust of the second-stage expansion cylinder. This condensate is stored separately and held under pressure until blended with large quantities of 48° B. naphtha.

At the plant shown in Plates VIII, A (p. 46), and IX, A (p. 47), the condensate collected in the expansion-exhaust accumulator tank is mixed with the balance of the plant product and the mixture is shipped, without blending, by auto trucks.

#### CONDENSABLE HYDROCARBON FRACTIONS IN NATURAL GAS.

From these data and from points previously brought out, it appears that different natural gas from different fields containing the same quantity of condensable vapors seldom contains the same percentages of the various hydrocarbon fractions entering into the composition of gasoline.

This, in part at least, explains the wide variation in the gravity and amount of product obtained under similar conditions of temperature and pressure in different plants treating gas from different parts of the same field or from different fields.

From the study made by the writer of the conditions as found in fields throughout the United States, the explanation seems to lie in

any one, or a combination, of three conditions—the fractional composition of the gasoline content of the oil from which the gas comes, the temperature of the oil, and the pressure on the oil at the time of releasing the vapors to the gas.

Under the first condition, as demonstrated by refinery results and fractionations, it has been shown that distillates of the same gravity and the same or different end points vary widely in the content of the different fractions obtained between the same temperature limits. The oil containing only certain fractions of the light hydrocarbons can give up only these fractions to the gas, regardless of the temperature or pressure.

As the temperature of the oil varies in different fields and at different localities and depths in the same field, the factor of temperature must bear directly on the fractions of distillates contained in the gas. At constant pressures and temperatures only certain of the fractions will vaporize and be carried into the gas, leaving other fractions as liquids with the oil.

In any oil field, rock pressures decline as the supply of gas and oil is reduced. As the boiling or vaporizing temperatures of liquids are lowered by reduced pressures, this condition of lower pressures allows the less volatile, heavier fractions to vaporize if the temperature remains constant, thus adding to the gasoline content of the gas. As the rock pressure becomes low and the rate of decline so slow as to be practically stationary, and vapors no longer distill naturally from the oil left in the ground, resort is had to vacuum pumps to increase the flow of oil and gas, thus permitting the vapors to distill from the oil in the sands. Under this method is produced the gas of which the greatest proportion is condensable, as in eastern compression practice.

The widely varying conditions under which casing-head gas obtains its charge of condensable vapors, the variable content of lighter hydrocarbons in the oil in the ground, and the direct effects of the law of partial pressures on the products precipitated at the different stages in plant practice will to no small extent account for the great differences in plant practice as to pressures and temperatures used, and also for the variations in the percentage and gravity of the condensates of successive plant stages and the gravity and vapor tensions of the product of plants in different fields.

#### VARIATIONS IN PLANT PRODUCT.

The quantity and the gravity of condensates from different plants is shown in Table 2 (p. 29). These figures represent the average quantity and the average gravity, but both vary considerably from day to day and month to month. Many theories have been advanced to account for these variations, but none of them is satisfactory in analyzing the variations as they actually occur in plant production.

From the known effects of temperature on gas containing condensable vapors, it is reasonable to believe that atmospheric conditions, changing as they do with the seasons, explain in part the differences noticed from time to time in the yields from the different stages and in the total plant output. Many operators state that a larger proportion of condensate of higher gravity is collected in the low-stage accumulator tanks in cold weather. This same result is noticed also in the quantity and gravity of "line distillate" precipitated in gathering systems and collected in the line drips. In many plants the total production increases in winter, but this is not always true, as in plants using low temperatures, produced by expansion engines. It is often found that cold weather condenses some vapor in the gathering lines, and unless this is collected and added to the total an actual decrease in plant production results. It has been shown by several records of plant production that the yield decreases on a cold day and increases to a point well above the average on the first warm day after a period of cold weather. A plant in a hot climate on keeping records of the variations in production and attempting to determine the factors concerned, found that in general the production usually varied from day to day with the temperature, but at times varied in the opposite direction. The operators believed that the cause was to be found in a combination of atmospheric conditions, including temperature, barometric pressure, and humidity, which undoubtedly would affect evaporation and cooling of water used either in towers or sprays. To what extent these conditions control the production or account for the variations in it, it is not possible to say.

Another plant that had been treating the same quantity of gas daily from the same wells for nearly three years suddenly increased its production from 5,200 to 5,900 gallons per day, averaged over a period of one month, no changes having been made in plant practice. The operators believed that the increase was due to some change in underground conditions that permitted the gas to be enriched. Exceedingly careful records have been kept at this plant, and these show that the daily production usually varied between 100 and 300 gallons. The sudden increase of 700 gallons daily over a period of one month has not been satisfactorily accounted for. The gravity of the condensate remained constant.

Usually the gravity of the total plant product increases in cold weather, owing to the separation of part of the heavy fractions in the gathering lines and to the condensation of lighter fractions in the water-cooled coils.

It appears that a satisfactory explanation of the causes of variation in production will not be arrived at until complete records of the variations in yield and gravity of the condensate, in the tem-



peratures and pressures used, and in atmospheric conditions are kept at different plants so these data can be studied with reference to each other and a comparison made of the results obtained at a number of plants in different fields and under different climatic conditions.

## THE USE OF AMMONIA AS AN AUXILIARY COOLING AGENT.

### DESCRIPTION OF PLANT IN FULLERTON FIELD.

A detailed description of plant 2, which is situated in the Fullerton, California, field follows: The casing-head gas being treated in the plant is brought from 20 oil wells through 3,500 feet of 2, 4, and 6 inch lines, 2-inch lead lines from the different wells being connected with the main gathering lines of 4 and 6 inches diameter.

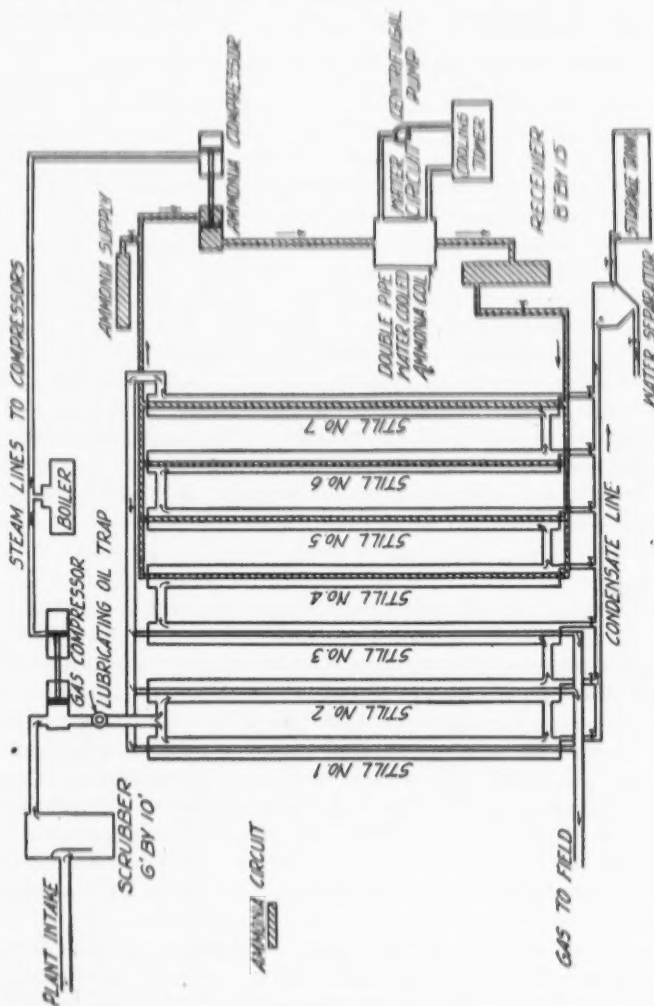
The 6-inch main discharges the gas at the plant into a 6-foot by 10-foot steel receiver which also acts as a scrubber and accumulating tank for "line distillate," removing from the gas the crude oil, the condensate formed in the pipe lines, and dirt. The receiver is connected to a single-stage, 40-horsepower, noncondensing, direct-connected air compressor with 12 by 16 by 12 inch cylinders. The compressor is steam driven, rate 200 revolutions per minute, and takes steam at a pressure of 110 pounds. The compressor holds on the intake receiver a 10-inch vacuum that brings the gas through the pipe lines from the well, but is practically dissipated by friction and leakage, leaving the pressure at the wells at or near zero.

### REFRIGERATION "STILLS."

Seven "stills," or coil heat interchangers are used in cooling the gas. (See fig. 11.) Each still consists of 1,260 feet of 1½-inch, extra heavy pipe coiled, with return bends, inside of a 12-inch tube 80 feet long laid at a slope of 1 inch in 10 feet, or 8 inches in all, to collect the condensate at one point, thence it is drained into storage or "make" tanks. The seven stills are parallel with one another, all draining in the same direction. Four of the stills, in which ammonia is used as the refrigerant, are insulated by about 1 foot of sawdust contained in a wooden housing about the tube; the other three coils, which treat the hot gas from the compressor, are not insulated and are exposed to the air, the hot gas flowing in the 12-inch tube and the cold gas in the 1½-inch coils.

The compressor discharges the gas at a pressure of 37 pounds and a temperature of 150° F. into stills 1 and 2, connected in parallel. These stills discharge into the outer tube of still 3, the gas from this still flowing through the outer tube of each of the other stills in succession. The dry, cold gas from still 7, in which the lowest temperature, approximately 10° F., and the final precipitation of condensate are obtained, is discharged into a pipe which returns it to the 1½-inch

coils of stills 1, 2, and 3. The gas is divided equally between the three coils of these stills, flowing through them in parallel, thence it discharges into a header connected with the field, or "dry-gas," lines carrying it back to the various leases.



## TEMPERATURES OBTAINED.

The following table gives the average temperature of the gas as it enters each of the stills; also the average gravity of the condensate discharged at the low end of each still. The gravity of the mixture of the entire product from all the stills averages 76° B.

FIGURE 11.—Flow sheet of compression plant in Fullerton, California, field.

*Temperature of gas and gravity of condensate from each of the seven stills.*

	Temperature of gas in each still, °F.	Gravity of condensate, °B.
Stills 1 and 2.....	150	62
Still 3.....	75	65
Still 4.....	50	73
Still 5.....	40	78
Still 6.....	30	85
Still 7.....	10	95

#### COOLING SURFACE.

In each still the 1,260 feet of 1½-inch pipe exposes a radiating surface of 412 square feet to the wet gas being refrigerated in the 12-inch tube, or 2,884 square feet in the entire set of seven stills. Of the 2,884 square feet of surface area, 1,648 feet are cooled by ammonia in stills 4, 5, 6, and 7, and 1,236 feet by cold, dry gas in stills 1, 2, and 3 that has passed through the entire set of refrigerating tubes, giving a total of 8.24 square feet of cooling surface for each 1,000 cubic feet of gas treated per day.

#### COLLECTING CONDENSATE.

The condensate from each still is drawn off continually from the bottom at the low end through a 1-inch pipe manifold to a cone-bottom settling tank in which the gasoline and the water separate by gravity, the water being drawn off at the bottom and the condensate flowing to the storage tanks. The 1-inch manifold and the bottom of each still are connected by a ½-inch gage glass through which the condensate precipitated in that still flows, allowing the operator to see at all times the flow of condensate before it is mixed with that of other stills. By this arrangement he can note, without stopping the plant, whether any discolored condensate is being discharged, or whether any one of the stills is not working properly.

#### AMMONIA CIRCUIT.

The ammonia used in refrigeration is compressed in the duplex compression cylinders of a 30-ton Stevens ice machine, direct-connected to a 125-horsepower, tandem-compound, steam-driven Corliss engine, with 10 by 20 by 12 inch cylinders taking steam at 110 pounds and operating at 80 revolutions per minute.

From the compression cylinders the ammonia gas is discharged at a pressure of 150 pounds to the inside 1½-inch pipe of a double-pipe water-cooled coil, the water circulating through the outside 2-inch pipe. This coil unit consists of three sets of double-pipe return-bend coils eight pipes high and 20 feet long. Water circulated by a centrifugal pump flows from the coils over a cooling tower, collects in the tower basin and is returned to the coils by the pump at a temperature somewhat below that of the atmosphere. From the inside coils the ammonia flows through a ½-inch pipe to a receiver or storage tank,

made of 8-inch casing 15 feet long, thence through an expansion valve to the four stills, connected in parallel as described above, at a pressure of 15 pounds and a temperature of 10° F. The ammonia is discharged from the four stills into a pipe manifold leading to the ammonia compressor, to be returned through the circuit. Ammonia lost in the pipes and stills by leaks and breaks is replaced from time to time from a steel bottle of compressed ammonia connected to the ammonia circuit as indicated in figure 11.

#### DESCRIPTION OF PLANT IN SANTA MARIA FIELD.

Plant 10 uses ammonia as an auxiliary cooling agent in addition to water cooling and expansion cooling. At this plant the gas passes through water-cooled coils after each of the three stages of compression, then through a coil cooled with brine refrigerated by ammonia from an ice-making machine, and then through double-pipe coils cooled by expanding gas.

The gas, after being cooled in the high-pressure (250 pounds) water-cooled coils, is led through a continuous coil of 4-inch pipe 450 feet in length, inclosed in a wooden tank or basin built with double walls and bottoms, 9 inches apart, the space between the walls being packed with sawdust. This coil is cooled with brine. The tank bottom has enough slope to drain the brine toward one end, whence it is pumped for recirculation through the unit. The brine (calcium-chloride solution) is brought in contact with the expanded ammonia by the use of coils in an iron tank, reducing the temperature of the brine to about 32° F. From this cooling tank the brine is circulated by a centrifugal pump to the gas-cooling coils, where it is discharged in such a way as to drip over the coil and collect at the low end of the basin, to be discharged again to the ammonia-cooled brine tank.

The gas discharged from the brine-cooled coils has a temperature of 32° to 34° F. The advantage claimed for this system is that the temperature produced by the brine cooling precipitates all the water vapor in the gas, thus preventing freezing of the double-pipe coils cooled by gas from the expansion engine. This is without doubt an advantage to be desired, but it could probably be obtained in this plant, as in other plants, by a more thorough use of expanded gas in coils of greater length and smaller diameter, or by using the expanded gas in two sets of coils and cooling the high-pressure gas in two stages, the first stage using the expanded gas from the second-stage coils. The first coils being partly warmed, would precipitate only water if the temperature were properly adjusted as is done in other plants described. The ammonia compressor and coils, also the brine circulating pumps, coils, and cooler could be abandoned, and only the extra set of expansion coils put in to replace them.

The brine and ammonia cooling installation is cumbersome, inefficient, and requires more time and care than the result warrants.

## TREATMENT OF STILL VAPORS BY COMPRESSION AT A REFINERY IN NEW JERSEY.

### VAPORS TREATED.

The gases treated in the compression plant, designated as plant 80 in the tables, at a refinery in New Jersey are those from all cooling coils in which the lighter fractions of crude oil and naphthas from both fire and steam stills are being condensed. Figure 12 shows (at the extreme left) the condenser box and coils from which the uncondensed gases and vapors treated by compression originate. From that point each unit and process is shown diagrammatically to the point at which the condensate and fixed gases are finally separated

### COLLECTING VAPORS.

At the discharge pipe of the coils in water boxes a T connection is made, the condensate flowing down into pipes connected with the "tail house" and "look boxes"; the gases and vapors rise through a vertical pipe 6 feet high to the 8 or 10 inch collecting pipe called the gas main. The gas main is also connected with a 2-inch pipe to the condensate line at a point about 2 feet back of the look boxes, and with a 2-inch pipe leading from the top of the look boxes, both of which are used to relieve the pressure and collect vapors that have been carried past the first stage of separation, or have formed in the condensate flow lines. From the top of the gas main the gas is led through 12-inch pipe connections past a butterfly valve, which regulates the vacuum held on the discharge pipes of the condenser coils, to a vertical steel receiving tank 15 feet in diameter and 18 feet high. In this tank the gas is given a preliminary scrubbing with sea water, removing part of the sulphur compounds, some heavy oils which have been carried through the stills, and a small quantity of discolored condensate of approximately 53° B. gravity. The 12-inch pipes leading to the receiver are taken out at the top of the gas main, instead of the bottom, so as to trap back any condensate formed in the main and allow it to flow down the 6-foot risers and back into the lines from the coils to the tail house with the rest of the condensates produced. The vacuum held and regulated by the butterfly valve, previously referred to, on the gas mains and on the discharge of the condenser coils is between 0.25 and 1 inch of mercury (2 to 8 ounces below atmospheric pressure). There is no gage between the butterfly valve and the blower that produces the vacuum, so no record of the pressure between these points is available. However, the writer was informed that a test had been made that showed a vacuum of 22 inches of mercury.

## SCRUBBING PROCESS.

From the receiving tank a 12-inch pipe carries the gas to a size 8 positive-pressure Root blower which holds the vacuum on the re-

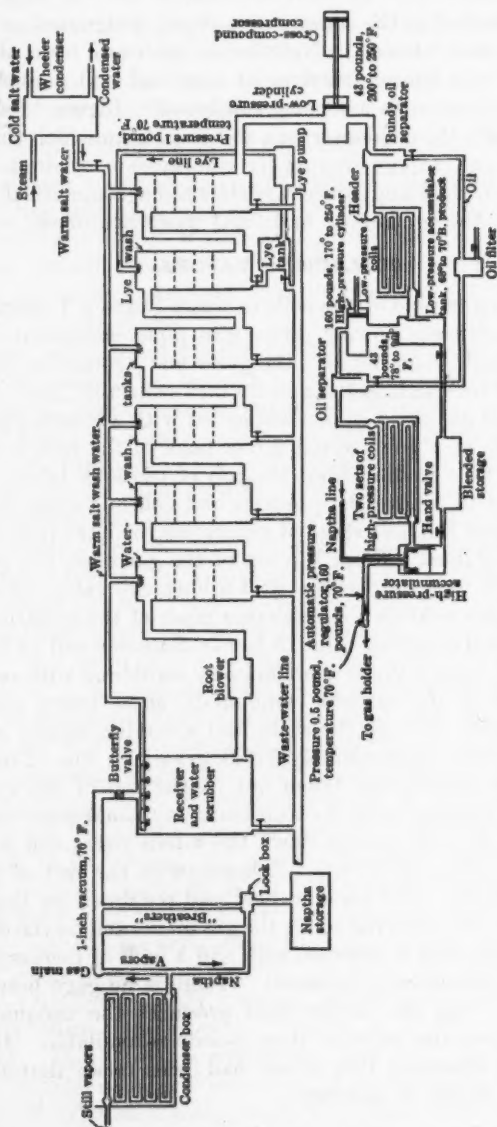


FIGURE 12.—Flow sheet of compression plant at a refinery in New Jersey.

ceiving tank and the gas mains and delivers the gas at a pressure of one pound to the scrubbers and the low-pressure compressor beyond

the scrubbers. From the blower the gas passes through six 4 by 20 foot vertical iron scrubbers connected in series. The connections are so made that by opening or closing valves, the scrubbers may be operated as two sets, in parallel, of three tanks connected in series. This arrangement was tried and abandoned in favor of the series of six. In each scrubber the gas enters at a point about two feet above the bottom, passes a series of wood baffles over which warm wash water or caustic solution is falling, and discharges at the top. The gas then passes through the next scrubber in the series.

In the first four scrubbers warm sea water, flowing over baffles countercurrent to the gas, is used to remove impurities, consisting chiefly of sulphur and sulphur compounds, from the gas. In the fifth scrubber a solution of sodium hydroxide (lye) with a specific gravity of 12° B. is circulated over the wood baffles, in the same manner as the water in the other tanks, to remove any acids contained in the gas. These impurities may originate either in the crude oil or in the refining of the various distillates from which vapors are taken for treatment by compression. The lye used, as received at the refinery from the manufacturer, is a 35° to 40° solution. It is transferred to one of four iron storage tanks and diluted to the strength used in the scrubber. After being circulated until it will not neutralize the acid in the gases and becomes foul, it is wasted and fresh solution is put into circulation.

In the sixth scrubber warm salt water is used to remove any traces of caustic remaining in the gas. Caustic in the gas would react with the lubricating oils in the compressor cylinders, causing cutting of the cylinders or an excessive waste of oil.

The gas in passing through the six scrubbers is warmed 2° to 5° F. by the warm water used as the scrubbing medium. This warm salt water is the discharge from the Wheeler condenser used in connection with the low-pressure steam cylinder of the compressor. The fact that the water used is salt has nothing to do with the process. Sea water is used because it is the most available, the plant being situated on the Atlantic coast. No condensate is formed during the scrubbing. This would be anticipated because of the increased temperature of the gas due to the use of the warm condenser water. Both the water and the lye solution circulated through the scrubber tanks are handled by duplex pumps.

#### COMPRESSION AND COOLING.

From the sixth scrubber the gas is delivered at a pressure of 1 pound and a temperature of 70° F. to the low-pressure cylinder of the compressor, which discharges it at a pressure of 43 pounds and a temperature varying between 200° and 250° F.

Gas discharged from the low-pressure cylinder to the intermediate cooling coils is passed through a Bundy oil separator, which removes



lubricating oils carried over with hot gas and gasoline vapor from the compressor cylinder. The coils used are the water-cooled type submerged in a box, typical of refinery construction. The gas is divided in a header into six sets of return-bend coils of 3-inch pipe 10 feet long and six pipes high, totaling 360 feet of 3-inch pipe, exposing a radiating surface of 283 square feet, or 0.189 square foot per 1,000 cubic feet of gas treated per day. This is approximately one-third of the radiating area usually found in compression plants for the same service.

At the bottom of the coil the gas is again collected through a header and discharged into an accumulator tank in which 750 to 1,000 gallons of condensate is collected each day. The condensate varies in gravity according to weather conditions, averaging 68° B. in summer and 72° B. in winter. The product collected in this accumulator tank is forced into storage tanks by the working gas pressure as often as necessary and blended with the rest of the condensate. The gas leaving the coils has a temperature of 70° to 90° F., the high temperature probably being due to the small cooling area used at this plant.

At this temperature and pressure (70° to 90° F. and 43 pounds) the gas enters the high-pressure cylinder and is discharged at a pressure of 160 pounds and a temperature between 170° and 250° F. The gas is again led through a Bundy trap to separate lubricating oils, as previously described, and then to the high-pressure cooling coils, which are the same size and length as the intermediate coils used to cool the low-pressure gas, except that two sets are used in series in place of one, having twice the cooling area. The average temperature to which the gas is reduced in these coils is 70° F. and is the lowest temperature used in the treatment.

After the condensate and gas have been separated in the high-pressure accumulator tank the pressure is reduced through a valve to one-half pound and the gas discharged to a gas receiver in which gas is stored and used for fuel under boilers, stills, etc., in the plant.

#### BLENDING.

Blending at this plant is all done under a pressure of 160 pounds in the high-pressure accumulator tank, as follows:

Naphtha with a gravity of 53° B. is pumped through 1½-inch pipe in coil boxes and cooled to 70° F., then into the top of the high-pressure accumulator tank, and sprayed through the rising gas at a rate which gives a mixture containing approximately four parts of naphtha to one of condensate, or about 80 per cent naphtha. At regular intervals the mixture is drawn off into another tank containing the low-stage condensate, and the resulting mixture sampled and tested for gravity. If the gravity is found to be too high, more

naphtha is pumped into the accumulator tank, which lowers the gravity of the next batch drawn off into the storage tank and of all the blend in storage, or if the gravity was too low the proportion of naphtha pumped into the accumulator is cut down. From 4,000 to 5,000 gallons of raw condensate is made daily in the high-pressure coils, and this with the condensate from the low-pressure coils makes a total production of 5,000 to 6,000 gallons per day from treated gases and vapors. The raw condensate from the high-pressure coils has a gravity varying between 76° and 93° B. After blending with naphtha, the product has a gravity of 58° to 61° B.

The level of the mixture in the high-pressure accumulator tank is at all times kept above the discharge pipe from the coils, thus forcing all the gas to pass through the blended product. It is claimed that this method adds 250 to 500 gallons daily to the net production. Inasmuch as the blend is four parts naphtha to one of condensate, and the temperature of the gas in the coils is such as to leave part of the comparatively heavy gasoline fractions uncondensed, absorption of liquids from the gases or absorption of the gases themselves may reasonably take place. The general practice throughout the United States, however, is to remove the condensate from contact with the gas as soon as possible.

#### QUANTITY OF GAS TREATED, AND PRODUCTION.

The volume of gas treated is computed from the compressor displacement, and the record of engine revolutions with 5 per cent deducted for slippage. On this basis the gas passing through the plant varies between 1½ and 2 million cubic feet per day, and shows an average production of 3.09 gallons of condensate per 1,000 cubic feet of gas treated.

#### COMPRESSOR.

All gas compressed passes through a 2-stage Corliss-valve compressor, direct connected to a combination cross-compound, condensing Corliss engine; steam cylinders are 16 and 32 inches in diameter with 30-inch stroke. The compressor speed varies greatly, being dependent upon the amount of gas coming from the stills, which in turn depends upon the stage of distillation of oil at which the various stills are working.

#### SPECIAL FEATURES OF PLANT.

The noteworthy features of this compression plant are the scrubbers for removing sulphur and acid, the Root blower as a booster unit, the passing of gas through the condensate to bring about greater production of gasoline condensate by absorption, and the large amount of naphtha used in the blended product.

**MACHINES USED IN COMPRESSION PLANTS.**

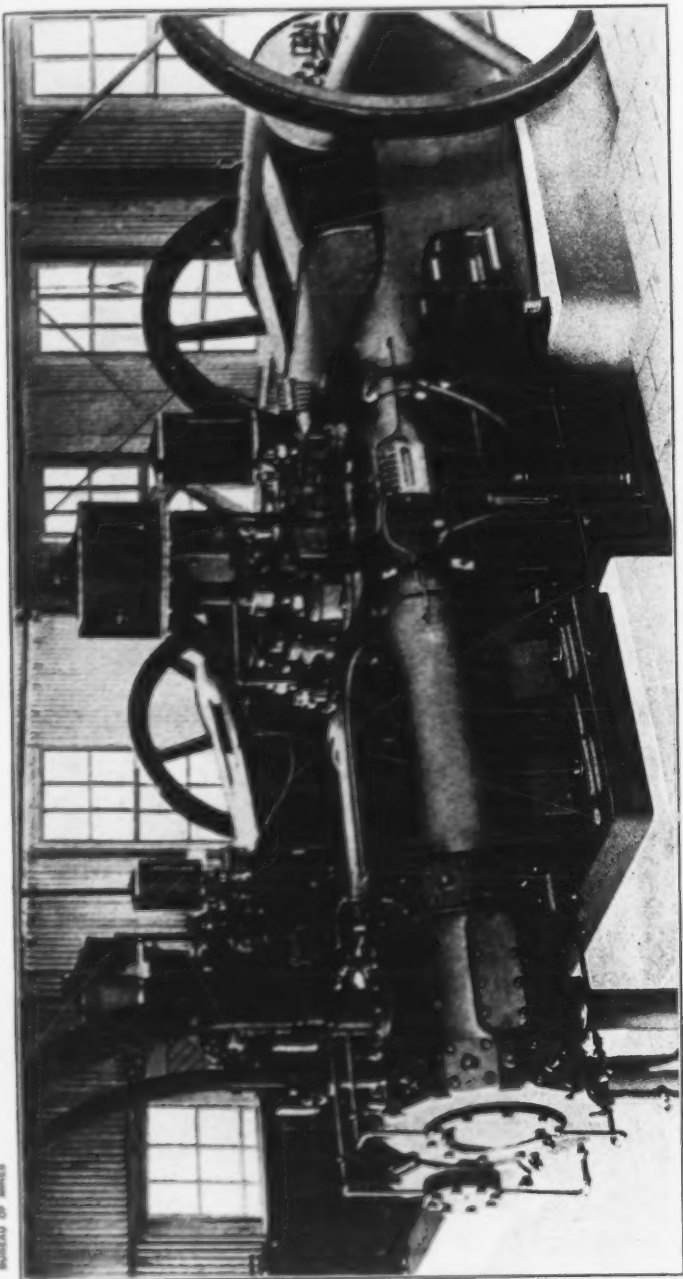
Table 7 shows the total rated horsepower used in gas compression in each of the plants listed, and the number of cubic feet of gas compressed per day by one rated horsepower.

TABLE 7.—*Rated horsepower and capacity of various plants.*

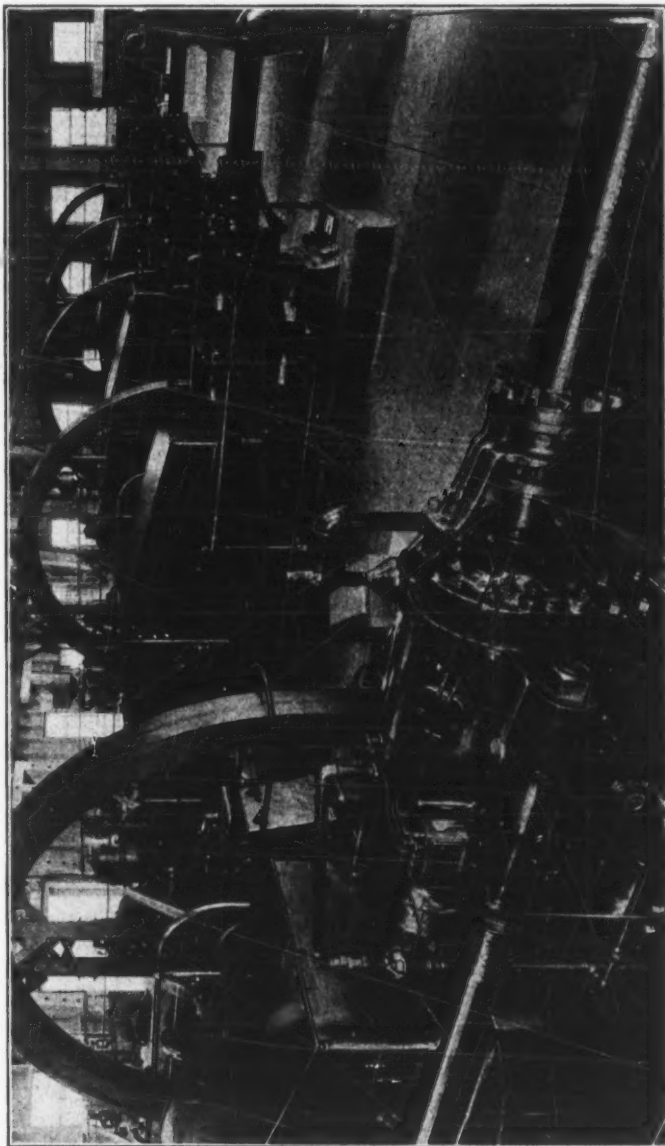
Plant No.	Total rated horsepower.	Cubic feet of gas compressed daily per horsepower.	Plant No.	Total rated horsepower.	Cubic feet of gas compressed daily per horsepower.
3	110	4,100	34	300	2,900
4	200	4,000	35	100	3,500
7	3,800	4,100	36	480	2,400
9	330	3,300	37	170	2,300
11	490	3,100	38	300	2,500
12	240	2,917	50	230	3,700
14	330	3,000	51	110	2,170
16	100	2,500	52	100	2,500
17	300	2,500	54	900	2,500
19	575	3,090	55	300	4,170
20	495	3,030	56	210	1,800
21	300	3,300	57	250	2,600
22	180	3,300	76	200	4,750
23	210	3,500	77	50	8,000
32	605	4,300	78	50	900
33	360	3,300	79	105	2,380

The quantity of gas compressed or treated per horsepower in the plants visited varies between wide limits. The chief causes for this variation are that the intake pressures vary widely and also the final pressures vary between 75 and 300 pounds. Many other factors in plant operation also affect the results, among which are the actual efficiency of the engine and compressor used, the temperature of the gas at different stages, the sizes and length of pipes through which the gas is forced, and the power used in driving pumps and line shafts, which in many plants is taken from the engine that drives the compressor. In plants where expansion engines are used to compress gas no attempt has been made to estimate or add the power delivered by such units.

The table shows that the average plant visited by the writer has 340 horsepower and treats approximately 3,250 cubic feet of gas per day for each rated horsepower installed. The conditions under which many of these plants are operating may be found in Tables 3, 4, and 5. Among operators who design plants and use the rated horsepower, rated compressor capacity, and atmospheric pressure at the intake, with a discharge pressure of 250 pounds, 4,000 cubic feet of gas daily per horsepower is used for preliminary estimates of the requirements of a plant to treat a given volume of gas. The final estimates necessarily must include all the items mentioned above, and also take into consideration all of the special conditions under which the plant in question is to operate.



TWO-STAGE DIRECT-CONNECTED COMPRESSOR AND GAS ENGINE.



FIVE 485 BRAKE-HORSEPOWER GAS ENGINES, FRONT-CONNECTED TO 15½-INCH COMPRESSOR CYLINDERS, AT A WEST VIRGINIA PLANT THAT COMPRESSES NATURAL GAS TO A PRESSURE OF 275 POUNDS GAGE DISCHARGE. IS FIELD END OF A 20-INCH PIPE LINE.

## ENGINES AND POWER.

Machines of practically all well-known manufacturers making gas engines or compressors have found their way into compression plants. One company which has done much pioneer work in both the laboratory and the field, tending to develop the natural-gas gasoline industry, has placed its engines, compressors, or both, in many plants in every field visited by the writer.

Plates XIII and XIV show engine installations at two compression plants.

Table 8 gives data on the motive power, types, and sizes of engines and compressors, method of connection, and the number of compressor units used in the plants visited.

In plant 24, electric motors have been installed to drive the compressors. Originally gas engines were used, but the gas being treated became so rich in gasoline content that not enough gas was discharged after treatment to operate the engines. The motors are set on the blocks that were used for engine beds and are in the same room with the compressors. Because of the possibility that gas may escape about the compressors and be ignited by sparks from the motors, this arrangement would appear to be dangerous practice, but thus far, owing probably to especial precautions in ventilation, no fires or explosions have occurred.

Plants 19, 20, and 21, all built in 1916, use vertical 4-cylinder, 4-cycle gas engines belted to the compressor units. While this type of machine has many moving parts which may get out of order, and a long crank shaft with its bearing to watch and tighten, it is giving complete satisfaction and is claimed to economize fuel and give an overload capacity of 25 per cent.

The 450-horsepower, direct-connected, 4-cycle, double-acting machines, although recognized as standard installations in gas-pumping plants throughout the country, have a number of disadvantages as units for the treatment of gas for gasoline extraction. A machine of this size should be installed only in plants that draw gas from areas large enough to insure a supply for a long term of years, and are of such capacity that one of these large units represents only a small fraction (10 to 20 per cent) of the total plant capacity, otherwise shutting down one unit unbalances the entire plant and materially reduces the output.

TABLE 8.—Data on engines and compressors

Plant No.	Engine.				
	Driven by—	Rated horsepower.	Type. <sup>a</sup>	Number of compressors used. <sup>b</sup>	Drive.
1	Steam.		Cross compound	2	Direct
2	do.	40	Straight line	2	do.
3	Gas	110	Straight-line, tandem, 2-cycle	1	Belted
4	do.	150	Twin cylinder	2	do.
	Steam.		Cross compound condensing.	1	Direct
	do.		Tandem compound condensing.	1	do.
6	do.		do.	1	do.
	High-pressure gas. <sup>c</sup>		Cross compound, 12 by 25 by 30.	1	do.
	Gas	450	Tandem, 4-cycle, double-acting.	2 low	do.
7	do.	450	do.	2 high	do.
	High-pressure gas. <sup>c</sup>		Cross compound	1	do.
8	Gas				do.
9	do.	80	Type VII, 16 by 20.	2 high and 2 low	do.
	High-pressure gas. <sup>c</sup>		Cross compound, 12 by 18 by 10.	1	do.
	Steam.		Cross compound, 12 by 20 by 12.	2	do.
10	do.		Simple, 12 by 12.	1	do.
	High-pressure gas. <sup>c</sup>		do.	1	do.
11	Gas	80	Type VII, 16 by 20.	6, 3 high and 3 low	do.
	High-pressure gas. <sup>c</sup>	80	Simple, 12 by 12.	1	do.
12	Gas	80	Type VII, 16 by 20.	4, 2 high and 2 low	do.
	High-pressure gas. <sup>c</sup>		Drilling engine, 9 by 12.	1	Belted to pump.
14	Gas	110	Twin	3	Belted
	High-pressure gas. <sup>c</sup>		Simple, 10 by 12.	1	Direct
16	Gas	80	Type VII, 12½ by 18.	2, 1 high and 1 low	do.
	High-pressure gas. <sup>c</sup>		Simple, 10 by 12.		do.
17	Gas	150	Twin cylinder	2	Belted
	High-pressure gas. <sup>c</sup>		Simple, 12 by 11.	1	Direct
	Gas	175	Vertical, 4-cylinder, 4-cycle.	3	Belted
19	High-pressure gas. <sup>c</sup>		Duplex pump, 10 by 12 by 6.	2	
20	Gas	165	Vertical, 4-cylinder, 4-cycle.	4	do.
21	do.	180	do.	4	do.
22	do.	Two 40	Type VII.	4, 2 high and 2 low	Direct
23	do.	Two 50	Single cylinder	1	Belted
24	Electricity	25	Motor	2	do.
26	Gas	80	Type VII.	2	Direct
27	do.	85-100	Horizontal	2	Belted
28	do.	100	do.	1	do.
29	do.	80	Single cylinder	1	do.
30	do.	70	do.	2	do.
31	do.	110	Twin	2	do.
32	do.	165	do.	9, 4 running.	do.
33	High-pressure gas. <sup>c</sup>		Cross compound, 12 by 19 by 18.	1	Direct
	Gas	Eight 50	Type VII.	10, 6 high and 5 low	do.
33	do.	Two 80	do.		do.
	High-pressure gas. <sup>c</sup>		Cross compound, 14 by 12 by 12.	1	do.
34	Gas	80	Type VII, 13½ by 18.	6, 3 high and 3 low	do.
37	do.	70	Single cylinder	1	Belted
	do.	80	Type VII, 13½ by 18.	2, 1 high and 1 low	Direct
38	do.	80	Single cylinder, 13½ by 18.	6, 3 high and 3 low	do.
50	do.	80	Type VIII, 16 by 20.	1	do.
51	do.	110	Twin-cylinder	1	Belted
52	do.	50	Type VII, 13½ by 18.	2, 1 high and 1 low	Direct

<sup>a</sup> Figures show size of cylinder in inches.<sup>b</sup> In this column "low" refers to low pressure, "high" to high pressure.



used at various compression plants.

Compressor.			Rated speed (r. p. m.).	Remarks.	
Description.	Size of cylinder (inches).				
	Low-pressure cylinder.	High-pressure cylinder.			
2-stage.....	21 by 24.....	9½ by 24.....	62	Two 300-hp. Sterling and four 150-hp. Erie boilers used.	
Single-stage.....	12 by 16.....		200		
2-stage.....	13½ by 14.....	6½ by 14.....	160		
do.....	16 by 16.....	8 by 16.....	180		
2-stage.....	20 by 24.....	9½ by 24.....	125		
do.....	15 by 24.....	7 by 24.....	145		
do.....	15 by 16.....	7½ by 16.....	115		
do.....	24 by 30.....	12 by 30.....	38		
Single-stage.....	31 by 36.....		125		
do.....		15½ by 36.....	125		
Single-stage (duplex).....	Two 22 by 16.....				
Single-stage.....	14 by 20.....	7½ by 20.....	200		
2-stage.....	16 by 10.....	8 by 10.....	100		
do.....	20 by 12.....	12 by 12.....		Used as low and intermediate at 12 pounds and 80 pounds.	
Single-stage.....		8 by 12.....	Varied.	Used as high at 250 pounds.	
do.....	14 by 12.....			Used as air compressor.	
do.....	Three 14 by 20.....	7½ by 20.....	180	Pumps dry gas at 60 pounds.	
do.....	14 by 12.....		145		
do.....	Two 7 by 20.....	Two 14 by 20.....	190		
2-stage.....	13 by 14.....	6½ by 14.....	170		
2-stage, tandem.....	8 by 12.....	4 by 12.....	200		
Single-stage.....	11 by 18.....	5½ by 18.....	180		
do.....	12 by 12.....				
2-stage.....	16 by 16.....	8 by 16.....	150		
Single-stage.....	20 by 11.....		78		
2-stage.....	16 by 16.....	8 by 16.....	158	Engine speed, 300 revolutions per minute.	
do.....				Water discharge throttled to 100 pounds.	
do.....	16 by 16.....	8 by 16.....		Drilling engine, 10 by 12-inch cylinder, used as expansion engine.	
do.....	16 by 16.....	8 by 16.....	150	Engine speed, 275 revolutions per minute.	
Single-stage.....				Drilling engine, 10½ by 12-inch cylinders, used as expansion engine.	
2-stage.....	11 by 15.....	7 by 15.....	115		
do.....	14 by 10.....	7½ by 10.....	120		
Single-stage (to 150 pounds).....			180		
2-stage.....	12½ by 14.....	6 by 14.....	180		
do.....	12½ by 14.....	6 by 14.....	180		
do.....	10½ by 12.....	5½ by 12.....	180		
do.....			180		
do.....	14 by 14.....	7 by 14.....	180		
do.....	16 by 16.....	8 by 16.....	180		
Single-stage (duplex).....	18 by 18.....		180		
Single-stage.....	Eight 12 by 18.....	Eight 6½ by 18.....		Feather valves on compressor.	
Single-stage (duplex).....	Two 14 by 20.....	Two 7 by 20.....	200		
do.....	14 by 12.....				
do.....	12 by 18.....	9 by 18.....	100		
2-stage.....	12 by 12.....	6 by 12.....	180		
Single-stage.....	10 by 18.....	5½ by 18.....	180		
do.....	12 by 18.....	6 by 18.....	180		
do.....	14 by 20.....	7 by 20.....	180		
2-stage.....	13 by 14.....	6 by 14.....	160		
Single-stage.....	12 by 18.....	6 by 18.....	180		
			180		
			180		
			180		
			180		
			180		

\* Expansion engine operated by expanding high-pressure, treated gas through it.

TABLE 8.—Data on engines and compressors

Plant No.	Engine.				
	Driven by—	Rated horsepower.	Type.	Number of compressors used.	Drive.
53	{ Gas.....	{ <sup>a</sup> 80	Type VII.....	2, 1 high and 1 low....	Direct.....
	{ do.....	{ <sup>b</sup> 50	Type VIII.....	do.....	do.....
	{ do.....	150	Twin.....	1.....	Belted.....
54	{ do.....	50	2-cylinder, tandem.....	1.....	do.....
	{ do.....	150	Type VII.....	6, 3 high and 3 low....	Direct.....
	{ do.....	150	Twin-cylinder.....	2.....	Belted.....
55	do.....	50	do.....	2.....	do.....
56	do.....	50	Type VIII.....	6, 3 high and 3 low....	Direct.....
57	do.....	70	Single-cylinder.....	3.....	Belted.....
58	do.....	70	do.....	5.....	do.....
59	do.....	50	Type VIII.....	.....	Direct.....
60	do.....	50	do.....	.....	do.....
61	do.....	50	do.....	.....	{ do.....
62	do.....	50	Type VIII.....	.....	{ Belted.....
63	do.....	50	Type VIII, 13 $\frac{1}{2}$ by 18.....	.....	do.....
76	{ High-pres- sure gas. <sup>c</sup>	.....	Duplex, 13 $\frac{1}{2}$ by 18.....	1.....	do.....
77	{ Gas.....	50	Type VIII.....	.....	do.....
78	{ High-pres- sure gas. <sup>c</sup>	.....	do.....	1.....	Direct.....
79	{ Gas.....	50	Pump, 10 by 6 by 12.....	2.....	do.....
80	do.....	35	Single cylinder.....	2.....	Belted.....
80	Steam.....	.....	Cross compound, Corliss, 16 by 32 by 30.....	1.....	Direct.....

<sup>a</sup> Low pressure.<sup>b</sup> High pressure.

used at various compression plants—Continued.

Compressor.			Rated speed (r. p. m.).	Remarks.
Description.	Size of cylinder (inches).			
	Low-pressure cylinder.	High-pressure cylinder.		
Single-stage				
do				
2-stage	15½ by 16	7½ by 16		
do	14 by 14	6½ by 14		
Single-stage	11 by 18	6 by 18	180	
2-stage	16 by 16	7 by 16	180	
do	16 by 16	7 by 16	180	
Single-stage	11 by 18	5½ by 18	180	
2-stage	12 by 12	6 by 12	180	
do	12 by 12	6 by 12	180	

c Expansion engine operated by expanding high-pressure, treated gas through it.

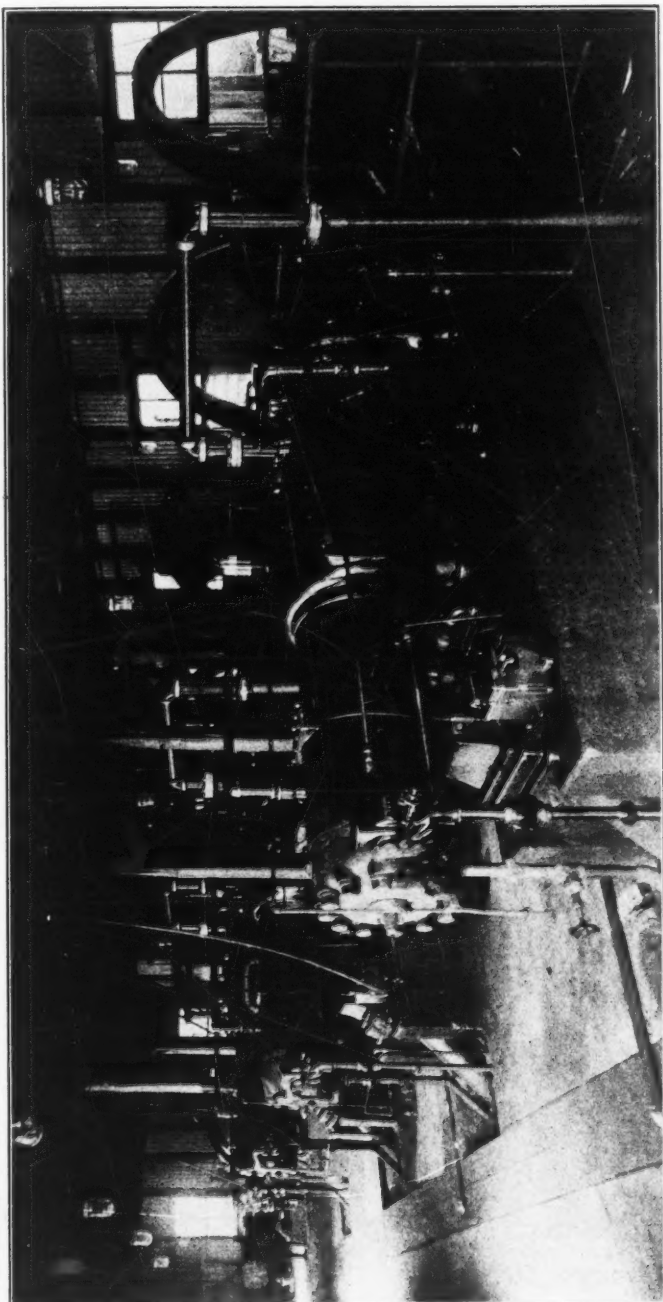
In the casing-head gasoline industry the gas supply from a given area is expected to decline and the pressure necessary to precipitate the condensable product usually becomes lower as the gas becomes richer. If all the power capacity thus relieved from duty is not used to increase the vacuums held on the lines, it is obvious that to remove one unit to another locality would be desirable. If one unit represented half the total plant capacity, it would be necessary to wait until the available supply of gas had been reduced 50 per cent before that unit could be transferred, but if that unit represented only 20 per cent of the plant capacity it could be removed when the gas had fallen off that amount; also it would be a much simpler matter to find a location or sale for a machine of one-half million feet capacity than for a machine requiring from three to four million feet per day. Another argument for machines of smaller capacity is the size and weight of parts which under the usual transportation conditions in oil fields is a serious problem in plant construction.

Both direct-connected (Pl. XV) and belted units are being installed in compression plants using the usual smaller units. However, many operators of wide experience prefer the belted drive, claiming that it simplifies repairs and renewals and gives a wider choice both of engine and compressor. The belted type requires larger buildings, because of the necessary distance between pulley centers, which the writer found to vary between 22 feet for vertical engines to 34 feet for horizontal types. In some plants two buildings are used, one containing the engines and the other the compressors, with belt galleries connecting the two. This is done as a precaution against fire and explosions.

#### **TYPES OF MACHINES USED AS EXPANSION UNITS.**

All expansion engines used in compression plants are machines originally designed to use steam that have been slightly modified to overcome the effects of the low temperatures from the use of compressed gas in the steam or power cylinders. Among the machines found in use are direct driven reciprocating pumps, drilling engines, and simple and cross compound compressors. Of these the reciprocating pump is the least to be recommended. The valves tend to freeze and stick, owing to the general design and slow action, and its efficiency as a power unit and its capacity are low.

Of the machines used as expansion engines the converted steam engine of the single or double stage (simple or compound) type is more often found than any other make. On these engines, remodeled for the expansion of high-pressure gas, the valve mechanism has been designed especially and made stronger for this particular service. The exceedingly low temperatures developed in the cylinders tend to freeze the valves, causing excessive strains on the valve stems and rods, and also make lubrication difficult.



DIRECT-CONNECTED COMPRESSOR AND GAS ENGINES.

Glycerin has universally been found to be the best lubricant for expansion cylinders and was in general use until the recent rise in price, and the difficulty of obtaining a reliable supply forced plant operators to try other oils, some of which have been found usable but not as satisfactory as glycerin. As the supply of that lubricant increases it will indoubtably again be generally used.

Other types of steam compressors and, in several plants, drilling engines belted to plunger or centrifugal pumps, are in use as expansion units, and, according to the operators using them, are giving satisfaction in regard to both capacity and temperatures. The loads of the drilling engines were varied to meet the conditions of pressure and volume of gas by throttling the flow of water from the pump, thus giving the required resistance for the development of power at normal engine speeds. The valve mechanism of the drilling engines was rebuilt and strengthened to meet these conditions.

At one plant where a drilling engine gave much trouble from freezing the piston rings were removed and the piston dressed to a square edge. The piston in this condition shaved the ice from the cylinder walls, thus preventing sticking or freezing. No lubricant was used in the cylinder, the film of ice or frost on its walls acting as a lubricant, and leakage past the piston after the film had formed was very small.

At plant 3 an engine of this type that has a 9 by 12 inch cylinder, making 90 revolutions per minute with one-fourth cut-off, takes gas at 130 pounds, gas at 250 pounds being throttled to that pressure, and exhausts it at 10 pounds. The engine is belted to a three-plunger pump throttled to a back pressure of 160 pounds in order to increase the load on the engine. The water pumped is used in the cooling towers and in the engine and the compressor jackets.

At plant 16 the expansion engine, accumulator tanks, and storage tanks are all housed in a double-wall insulated building. The advantage claimed is that the condensate is held at a low temperature in the storage and other tanks, thus preventing loss by evaporation through heating before blending. The condensate precipitated in the coils is kept from sudden and extreme rises in temperature, as would be the case if the storage tanks were not cooled or shaded. The temperature in the building and of the condensate in storage is thus held between 34° and 50° F.

Expanding the compressed, treated gas in engines to develop power for driving compressors or pumps is not an economy, because of the small amount of actual power delivered, the care necessary, and the cost of upkeep and lubrication, such engines being used only because the cooling effect the expanded gas has in the treatment of high-pressure gas in double-pipe coils or heat interchangers.

In simple expansion engines such as pumps, drilling engines, or single-expansion compressors the compressed gas before entering the

power cylinder is often reduced by a throttle valve from the maximum pressure used in the plant to pressures varying between 120 and 160 pounds, depending upon the design and size of the machine and the pressures for which it was built and under which it gives the best results.

Cross-compound machines usually take the gas at the maximum plant pressure and reduce the pressure in the first expansion to 30 to 60 pounds (see Table 5) and in the second stage to between 5 and 15 pounds. Generally the gas goes from the first-stage expansion cylinder to a drip or small accumulator tank, then directly to the low-stage cylinder. In plant 6 (see Table 4, p. 41), the gas from the first-stage expansion is led through a set of double-pipe coils and heated before being put through the second stage of expansion. By this system both the power developed in the expansion engine and the cooling efficiency of the expanded gas are increased, also the danger of freezing in the expansion cylinders is less.

#### COMPRESSORS.

Direct-connected compressor units are usually of the single-cylinder engine, single-stage type, although some plants in the eastern and Mid-Continent fields are using direct-connected, twin 2-stage machines. Of the direct-connected compressors the single-stage unit, found more often than any other make, as shown in Tables 8 and 9, has the engine and compressor cylinders opposed, or on the opposite sides of the fly wheels.

The sizes and types of compressors used in the various plants visited by the writer are shown in Table 8 (p. 74), which conveys an idea of the great variety of compressors and drives used in such plants.

#### AUXILIARY MACHINES.

In all natural-gas gasoline plants small engines are needed to circulate water in jackets, towers, and ponds, to produce electricity for light and pump air to start gas engines. The number, situation, and type and size of these units are generally matters of preference with each plant operator and no standard has been followed.

#### WATER-CIRCULATING PUMPS.

Many of the newest plants have centrifugal pumps belted to a pulley on the engine, which circulate the water used in both engine and compressor cylinder jackets; other plants use a line shaft with pulleys belted to the engines and to the centrifugal pumps. In many fields the water is heavily charged with mineral salts, and the water used in the cylinder jackets is often distilled or condensed and kept separate from that used in cooling the gas coils. This is often done by cooling the condensed water in a separate tower or by passing it through coils



in the main gas-cooling tower that are cooled with spray in the same way that the gas coils are cooled. In the latter method the condensed water is pumped from the coils in the tower through the jackets and back to the coils in a closed circuit. Where a separate tower is used the condensed warm water is sprayed in the tower, collected in the basin beneath the tower, and circulated by pumps through the jackets, and returned to the top of the tower to repeat the cooling and aeration. In this method the loss of condensed water in the tower is so great that it is not to be recommended unless the condensed water is easily made or obtainable from a boiler plant. The cooling effect gained is better, and the installation less expensive, if the cost of condensed water is not an object.

For circulating the water used to cool the gas, usually centrifugal or plunger pumps driven by small (5 to 10 horsepower) gas engines, or belted to a line shaft, are installed.

#### AIR PUMPS.

Air pumps for compressing air in receivers to start the main gas engines are generally single-cylinder pumps or compressors belted to gas engines, previously mentioned, or, in some plants, to a line shaft driven by a small gas engine. The receivers are built to stand pressures up to 250 pounds. When the desired pressure is built up in the receiver, the air pump is shut down until the pressure is relieved by use in starting the main gas engines, or by leakage, when the pump is again operated until the required pressure is obtained.

#### LIGHTING EQUIPMENT.

The necessity of using strong, reliable inclosed lights around compression machinery and the danger of open flames in plants treating natural gas at high pressures has forced operators to install small electric generators as part of the equipment of gasoline plants.

The electric plant is always housed in a building separate from the compressors, and usually in the building with the air and water pumps. The unit consists of a gas engine belted to a dynamo of a size and capacity suitable to the lighting needs of the plant, and is operated only at night. In large gas-pumping stations storage batteries are used both for light and for engine ignition, in place of direct connections.

#### GASOLINE PUMPS.

Plants situated some distance from the shipping point or blending station often require pumps to force the gasoline through the pipe lines to such stations.

The product is often blown from one tank to another by turning high-pressure gas into the tank containing the product, but where the

distance is great this method is not always satisfactory, and pumps of either rotary or reciprocating type are installed, usually being operated by belt connections to small gas engines. It is claimed for the rotary pumps that condensate losses are smaller than from the use of other types, because the agitation is less and the flow more steady and quiet through the pump and into the lines.

### BLENDING AND SHIPPING THE CONDENSATE.

Although blending of compression-plant condensates is not done primarily for the purpose of making a product that will meet the specifications required by transportation laws governing the shipment of gasoline by rail or water, blending and shipping have become such important functions, one of the other, that a separate discussion of the blending process and the transportation of the blended stock is not desirable.

#### REASONS FOR BLENDING.

When the condensate produced by compression is allowed to weather unblended until its vapor tension is reduced to less than 10 pounds at 100° F. and its temperature rises to atmospheric, losses ranging up to 75 per cent of the total product often result, whereas if the condensate is mixed (blended) with heavier straight still-run refinery distillates the losses from weathering are reduced, usually to one-half that amount, and often more. This fact has led condensate producers to take advantage of blending to increase the volume of the product actually marketed, thus increasing their profits and also the supply of marketable motor fuels so desirable under present conditions. The development in gasoline motors up to the present time has not reached a stage that would make the heavier still distillates, such as are used for blending, a convenient or economical fuel if used as made, because of the difficulty in starting the motor with such fuel and its tendency to deposit carbon in the cylinders and on the pistons from incomplete combustion, causing "engine trouble."

Condensate produced by compression is also an undesirable fuel for gasoline engines. It is exceedingly volatile, which causes losses in handling, is dangerous because fumes are easily formed, and gives less power as compared with equal volumes of heavier distillates, a larger number of gallons being required to develop the same power. It gives a quick, sharp explosion in a motor cylinder, but seems to lack "push" after the explosion has taken place. In the above qualities it is in no way different from still-run products of similar gravity and similar end points, both products needing additions of less volatile, heavier, and more powerful fractions in order to form the most convenient and economical motor fuel.

The lighter fractions of petroleum distillates, as compared with the heavier products, have a lower calorific value per gallon but a

higher calorific value per pound. As all products of petroleum are sold in the United States by volume or liquid measure, the standards for comparison must be made on the heat units per volume and not per weight.

As previously stated, another important factor in blending is transportation. The Interstate Commerce Commission rules controlling shipments of petroleum products and liquefied natural gas allow transportation of petroleum distillates having vapor tensions of less than 10 pounds per square inch in standard tank cars, and products with vapor tensions of 15 pounds per square inch in specially built insulated tanks. As many plants produce condensate that has a vapor tension of 30 or more pounds as it comes from the accumulator tanks, blending and weathering are both resorted to by most manufacturers in order to bring the product within shipping rules, to increase the quantity, and to improve the quality of the product.

#### **MARKETING UNBLENDED CONDENSATE.**

A small quantity of natural-gas gasoline finds its way to consumers unblended. It is sold as "gas-machine gasoline," a product with a gravity of 80° to 86° B., used to make gas for certain domestic, commercial, and chemical purposes, and as "export gasoline," a product with a gravity of 74° to 80° B. and of 4 to 6 pounds vapor tension, which is usually sold in containers to foreign trade.

The great bulk of condensate, however, is blended in one way or another before it reaches the consumer, but not always completely blended at the plant where it is made, or by the producer.

In many eastern fields the condensate is held in storage under pressure until a given quantity is ready for shipment, when it is forced by gas pressure or pumps through small (2-inch) pipe lines to the tanks of firms making a specialty of blending and marketing motor fuels, and having blending stations centrally situated among the compression plants from which they receive condensate. Products having a gravity as high as 84° B. are shipped in this way to blending companies.

#### **SHIPPING BY AUTO TRUCK.**

Another method of shipment, used mostly in California and northern Pennsylvania, is by tanks mounted on auto truck. Two plants shipping condensate of 80° to 83° B. gravity in this way are situated 30 miles from the blending stations of the buying companies. These are unusual examples, but a number of plants ship their product 6 to 10 miles in tanks of this character. Generally the tank is kept under a pressure of 10 to 20 pounds in order to reduce losses of the light condensates from agitation and heating during transportation.

## TRANSPORTING CONDENSATE IN CRUDE OIL.

Certain large producing and refining companies in California which buy or produce casing-head gasoline gage the product in the storage tanks at the compression plants for settlement, and have the condensate pumped directly into their crude oil storage or pipe lines leading to their refineries. They not only recover the gasoline when the crude oil is refined, but take advantage of the fact that the condensate "cuts" the crude, making it flow through the lines more easily. The extremely light fractions that are thus injected into the crude oil, and will not condense in the usual refinery condenser boxes, can be and are in many refineries compressed and cooled as in compression plants. This product is immediately blended at the refinery and thus held and sold.

As previously mentioned, a company in the Mid-Continent field produces only such condensates as can be shipped in tank cars. This is done by regulating the pressures and the temperatures used in the compression plant, so that only such condensate as can be shipped unblended will be precipitated.

A plant in California and some plants in other fields reduce the unblended condensate to conform with the shipping rules by weathering, because of the cost of shipping in blending naphtha. The condensate is exposed in storage tanks to atmospheric temperature and pressure until the vapor tension is reduced to the desired point, and then shipped in insulated cars. At times warming with steam is resorted to if the atmospheric conditions do not bring about the proper results. The use of steam is not to be recommended, however, except when absolutely necessary, because of the loss of some of the heavier fractions with the lighter ones.

## METHODS OF BLENDING.

Blending condensate with the various distillates used for that purpose, as practiced at present, is done at times in stages, and at many different points in the precipitation, storage, or transportation of the product.

The product of plants that ship their condensate without being blended usually goes to refineries or blending stations belonging to purchasers of this type of product, who blend the condensate before sending it to the retail markets. One blending company in West Virginia buys condensate, pumps it to the plant in pipe lines, stores it in closed tanks until needed, then blends it with naphtha in the following manner:

A tank car of naphtha is one-half unloaded, usually into an empty tank car, and then condensate is slowly pumped in through a valve in the bottom until the tank is filled. The condensate rises through

the naphtha and slightly agitates it, and in this way becomes absorbed and blended with the naphtha. At times the operation is reversed, a tank car being half filled with condensate and the naphtha pumped in from above. No further treatment is used, the car being shipped as soon as filled. The agitation during shipment tends to complete blending if such is necessary.

Blending practice at some refineries and casing-head gasoline plants is practically the same as described above except that stationary tanks are used in place of tanks on cars. At other blending plants a pump is used in blending, its suction being connected with two tanks, one of blending stock and the other of condensate. The flow of each is regulated in the pipe line by valves, the discharge of the pump going to a storage tank. From time to time the mixture in the storage tank is tested for gravity, if the blend is too light or too heavy the flow of either naphtha or condensate is adjusted to give the desired mixture.

At some plants methods of blending are more complicated. The procedure used by one company receiving its condensate by auto truck is as follows: A given quantity of California distillate with a gravity of  $53^{\circ}$  to  $55^{\circ}$  B. is placed in a cone-bottom blending tank, where it is washed with acid solution, caustic solution, and water; after this treatment condensate with a gravity of  $72^{\circ}$  to  $82^{\circ}$  B. is forced into the tank from the bottom. Air is then blown through the mixture to agitate it and remove the lightest fractions of condensate and dissolved gases. The mixture is tested for specific gravity, after which enough still-run California gasoline with a gravity of  $58^{\circ}$  B. is added to bring the whole to a gravity of  $60^{\circ}$  B. The blended gasoline produced by the above method and ingredients is sweet, water white, and has the following characteristics: 5.9 per cent distills over up to  $140^{\circ}$  F., the distillate having a gravity of  $79.9^{\circ}$  B.; 70 per cent distills over up to  $246^{\circ}$  F.; and 30 per cent distills over between  $246^{\circ}$  and  $344^{\circ}$  F.

Distilling this blended product in 5 per cent cuts shows it to be an exceptionally good motor fuel with none of the usual fractions missing.

While holding condensate in storage some blending companies and refineries, as well as compression-plant operators, keep the tanks containing such stock under pressure and often the tanks are insulated or housed and shaded in order to reduce evaporation by the sun and the atmosphere, one company having gone to the expense of building a louver tower over the tanks and keeping small sprays of water constantly covering them. The tanks, which are held under pressures of 10 to 20 pounds, are set in a concrete or wooden basin. The water collects in this basin, thence it is again circulated over the tanks by pumps. No outside cooling of the water is resorted to, the

evaporation from falling through the tower and over the tanks being sufficient to keep the water at a temperature considerably below that of the atmosphere, also any volatilization of the condensate itself tends to cool the liquid.

Where blending is done by refining or blending companies, as has been described, the operation is complete and the blended product is ready for market. The blended gasoline made in the Eastern fields has a gravity of between 65° and 70° B., and that made in California between 58° and 63° B. The difference in gravity is due to differences in the character of the crude oils from which the condensate and the blending stocks were made; this variation is discussed in later paragraphs. The blending is usually done so as to bring the product to a given gravity by the mixture of the two ingredients, whereas the final end point is determined by, and is the same, as the end point of the naphtha used. Although the proportions vary under these conditions, the proportions to be mixed to make a product of a given gravity can be approximately calculated from the gravity and the end points of the two liquids.

The methods of disposal of condensate mentioned are found mostly in California and some eastern districts; with few exceptions the practice in the Mid-Continent field is to blend either at the compression plant or at the loading station operated in conjunction with the plant.

#### BLENDING BY PLANT OPERATORS.

When the blending is done by the operator of the compression plant, one of the following methods is generally adopted: (1) Blending all of the condensate at the blending station or loading racks; (2) blending to a given stage at the plant, and transferring the partly blended product to the loading racks and either finishing the blending there or shipping it to some point at which naphtha is cheaper or more readily obtained; and (3) completing the entire operation at the plant.

#### BLENDING AT THE LOADING RACKS.

Many of the companies controlling two or more compression plants, situated in the same field and tributary to the same shipping point on a railroad, have adopted the method of blending the products from all their plants at a central station. A centrally situated loading station with racks and tanks (see Plate XII, A, p. 52), is necessary in any event for storing and loading the plant products and unloading and storing the blending stocks, so that the stations can be also fitted for blending practically without additional cost of labor and small increases in tankage.

In stations used in this way, the usual equipment consists of tanks of any desired capacity for the storage of naphtha, other tanks for

the storage of condensate, and tanks for the blended stock and from which the marketable product is transferred to tank cars for shipment.

The plant condensate is pumped or forced by its own pressure through small pipe lines into the condensate storage tanks, and the naphtha from tank cars is pumped into the naphtha tanks. From the naphtha storage tank a given quantity of naphtha is first pumped into the blending tank, then condensate is forced into the blending tank at the bottom, being allowed to rise through and be thoroughly absorbed by the heavier naphtha. When the predetermined quantity of each stock has been mixed in the blending tank, samples are tested for gravity, and if any change in gravity is desired more of the heavy or light stock is added, as the tests indicate to be necessary. The blended gasoline is next tested for vapor tension, and, if it is found to be too high for shipment in the cars used (standard or insulated tanks), the tank is allowed to stand open to the atmosphere for several hours, or even days, if necessary. In some plants it has been found necessary to heat the blended products to 80° to 90° F. with steam, in order to reduce the vapor tension to the required point in a limited time, so that the blending could continue without the installation of an excessive amount of tankage. Heating with steam should not be resorted to if avoidable, as a quick rise in temperature drives the lighter condensates off rapidly, carrying with them portions of the heavier and less volatile fractions. When the specific gravity and the vapor tension have been brought to a point within the regulations governing shipments of gasoline, the contents of the blending tank are either drawn off into cars for immediate shipment or pumped into a storage tank.

The blending method used at the majority of such stations usually consists merely of mixing calculated quantities of the different stocks to be disposed of and reducing the vapor tension of the mixture by open contact with the air or by slight warming with steam coils, placed in the blending tank.

The advantages of blending at loading and storage stations are that the productions of a number of plants can be handled, close connection with railroad service, and the low cost of handling both the naphtha and the blended stock. At times the tank cars are used as blending tanks, as described in a previous paragraph.

#### PARTIAL BLENDING AT PLANT.

Some operators, because of the plant being in a place where it is difficult or costs too much to bring in large quantities of naphtha, or, more often, because the company controls a refinery and desires to refine the gasoline by further treatment, such as distilling, have adopted the practice of blending only so far as is necessary for shipment at the compression plant or blending station, the final blending



and treatment being given at the refineries or points where the desired quantities and qualities of distillates may more readily be obtained. Some operators blend partly at the plants and finish the operation at the blending station or loading racks as described above, thus saving the costs of handling, of pipe line, and of the pumping capacity necessary to transfer all of the heavy blending stock to the plant and back to the loading station.

When the blending is completed at the blending station, it is done in the way described, except that smaller proportions of heavy naphtha are added, because some heavy naphtha has been previously added to the condensate at the plant.

#### PLANT BLENDING METHODS.

Plants at which blending is entirely or partly completed have developed methods and practices quite different from the usual way of mixing the two constituents in a blending tank. Many plants still blend the condensate and the naphtha in storage or blending tanks, using the methods previously described above, but a tendency has developed for blending at much earlier stages of the process.

#### BLENDING IN "MAKE TANKS."

The first step in this development was when certain operators pumped blending naphtha into the tanks known as "make tanks" (see Pl. IV, *C*, p. 26, and XII, *C*, p. 52), which receive the condensate from the accumulator tanks, and in which the total make of one day or shift was measured before being transferred to storage. The method as now used is to pump naphtha into the tank at such a rate that the percentage in the mixture would be somewhat below that desired in the final blend, or to place a given quantity of naphtha in the make tank and discharge condensate from the accumulators into the naphtha. In transferring condensate from the accumulator tank to the make tank, the sudden release of pressure causes violent weathering or boiling, owing to the high vapor tension. By adding heavier blending stocks at this point the vapor tension is lowered, with consequent lessening of losses from the light condensate and dissolved gas weathering rapidly and carrying off with them part of the heavier fractions.

The product of this blend is gaged in the make tank, the quantity of naphtha deducted, and the actual plant production calculated. At the end of each day or shift the mixture is transferred to storage tanks and the blend completed or shipped to another point for blending as described above.

#### BLENDING IN ACCUMULATOR TANKS.

Blending in accumulator tanks, as found in practice by the writer, consists of pumping naphtha slowly and continually into the tanks, connected with the high-pressure coils, at a pressure a few pounds in

excess of that at which the gas is being treated. The naphtha is injected into the tank through small ( $\frac{1}{4}$ -inch) pipes at a point near the top and through fittings which cause a spray, the theory being that the spray will collect fine particles of condensate in falling through the gas and reduce the gravity and the vapor tension of the product before it is released from the high pressure at which it is precipitated and thus reduce losses of condensate.

Operators using this method claim it produces a marked increase in plant production, one in particular claiming a net increase of 10 per cent. The mixture is drained from the accumulator tank as in other practice, either automatically or by hand, as the custom of the plant may be, the quantities being figured as previously described to determine the plant production.

#### HOT BLENDING.

When naphtha is injected into the high-pressure gas while it is in the coils, or before it has reached the coils, and is still hot from compression, the method is called "hot blending."

This method has been adopted at some plants where the gas treated contains large proportions of the exceedingly light fractions and the condensate had shown extreme losses in storage and during weathering and blending by other methods. A Pennsylvania operator producing condensate with a gravity of 92° to 95° B. claims a net gain of 15 per cent in marketed condensate from the use of this method, and one in Oklahoma, approximately 30 per cent.

Hot blending has been tried out at two California plants, in different fields, to the writer's knowledge and no advantage gained. The plants produce condensate with a gravity of 82° to 86° B., using pressures between 200 and 250 pounds.

One eastern plant, which compressed the gas to 300 pounds pressure, injects naphtha through a needle valve placed in the high-pressure water-cooled coil header at the intake (hot) end of the coil. The naphtha is pumped through the valve at a pressure of 400 pounds per square inch, which causes it to spray or atomize in the header and intimately mix with the hot gas as the gas divides into the coil pipes leading out of the header. The first few (10 to 15) feet of this coil is kept dry to permit the hot gas to vaporize as much of the naphtha as possible before the gas and the naphtha are cooled by the water sprayed over the rest of the coil.

What happens to the injected naphtha is not definitely known, but it appears that the naphtha is divided into three parts. One part is volatilized by the heat of the high-pressure gas (190° F. on the day of the writer's visit), carried with the gas into the water-cooled coils, and again condensed, thence it is carried to the accumulator tank with other condensate. A second part of the atomized naphtha is probably carried mechanically into the upper pipes of

the coil by the flow of gas, where it settles out, owing to the slower rate of flow, and carries with it other condensable vapors. The third part, which is neither vaporized nor carried mechanically into the upper members of the coil, goes to the bottom of the header and flows with the gas through the bottom pipe and blends with the condensate and naphtha in the discharge header, while still under maximum pressure. The mixture then flows to the accumulator tank and thence is trapped into storage tanks.

The quantity of naphtha injected into the header is calculated to be somewhat less than is needed to bring the mixture to the gravity desired, the balance being added, in this plant, to the partly blended stock in the make tank, which is also held under pressure. Another feature of the practice at this plant is that the pressure on the blended stock is reduced slowly to avoid violent boiling or weathering. This is accomplished by holding a pressure of 50 or 60 pounds on the make tank while the output of the plant is being transferred to it during a day or shift. At the end of that period another tank is put into service and the pressure on the tank containing the day's "make" is slowly relieved, while the stock gradually acquires approximately the temperature of the atmosphere. At this point the blend is transferred to storage tanks or placed in tank cars for shipment. For each 100 gallons of condensate produced 77 gallons of naphtha is pumped into the coils, which lowers the gravity of the condensate from 90° to 96° B. to between 70° and 76° B.; later, in the "make" tank, enough eastern naphtha, with a gravity of 58° to 60° B., or California distillate, with a gravity of 48° B., is added to form a blend of the desired quality.

At another plant a practice similar to the one just described was adopted, except that the naphtha was injected into the hot-gas line at a point just beyond the oil separator and 40 or 50 feet ahead of the coils, the naphtha thus traveling with the gas through the coils and on to the accumulator tanks. This plant, although making 9 gallons of condensate per thousand feet of gas treated, as measured in the accumulator tanks, had by the old method of blending been able to market only 2.5 gallons. By the adoption of hot blending it was able to market 3.7 gallons from each thousand feet of gas treated. The loss, however, is still extremely high, and it is probable that an entire readjustment of pressures and temperatures throughout the plant would show better returns and smaller losses.

#### POSSIBLE IMPROVEMENTS IN BLENDING METHODS.

No set of rules can be given or standard methods of blending described that would even approximately cover all conditions, but there are methods and practices that if adopted by individual plants would have marked advantages and show a decided saving of condensate.

The problems of each plant must necessarily be taken up separately and a study made of the properties and characteristics of the condensate formed, such as the gravity, the vapor tension, and the proportions of the different "cuts" and the hydrocarbons they contain. That these vary widely is shown by the different pressures and temperatures necessary to precipitate the condensates, also by the vapor tensions or wildness of different plant products. The point at which blending is done should be given attention, to find whether the best results are obtained by blending in storage tanks, in make tanks, in accumulator tanks, or in coils, also the effects of release of pressure and rise in temperature should be studied to find whether sudden lowering of pressure and rise in temperature does not cause undue losses. Blended products are at many plants placed in storage tanks which are not protected from the sun and a quick rise in temperature is to be expected. The color an exposed tank is painted, has a direct bearing on the amount of heat absorbed from the sun's rays and taken up by the contents. Releasing the pressure on the condensate slowly, or holding it under a low pressure and storing it in insulated tanks has, at a number of plants, been found to decrease losses.

Refining companies have found that storing the lighter distillates in tanks with the water-sealed top, painted glossy white, show reduced losses well worth the expense of construction and operation of this system of storage.

#### **LOSSES OF CONDENSATE IN WEATHERING AND SHIPPING.**

Plant operators, in reporting losses of condensate, often use as a basis the total amount of condensate collected and measured in the accumulator tanks before blending, and while still under pressure, which is obviously the wrong place to make such an estimate, because such measurement is taken during treatment and not at the final stage of production. The condensate in the accumulator tank, because of the temperature and pressure, contains some dissolved gas and fractions of the hydrocarbon group which it is impossible to hold under normal atmospheric conditions, and which should not be counted as loss when computing the plant production.

The writer, in order to form an accurate idea of the losses at different plants, and as far as possible to use the same basis in estimating these losses, has obtained from the plants listed the quantity of condensate actually stored in tanks, either blended or unblended as the practice indicated. With this quantity as a basis estimates of the losses in further operations, such as weathering, pumping to loading stations, loading in cars and shipping, are computed.

In Table 2 (p. 29), the column headed "Daily production, gallons," represents the number of gallons that were actually marketed by the different plants listed, as nearly as these figures could be arrived at, and is net production after all losses are deducted.

## CALIFORNIA PRACTICE.

California plants, in general, trap or blow the product of the accumulator tanks directly into storage tanks without blending and measure the make in the storage tanks. As these tanks are seldom held under pressures greater than 5 to 15 pounds, weathering goes on continually and causes an unknown loss, only the weathered product being measured.

At plants where the raw condensate is pumped from the storage tanks into the crude oil storage tanks of purchasing companies, under this method of calculating losses the results show no loss except that due to weathering while the condensate is being held in plant storage, the product being sold on the gage readings taken in the storage tank at the compression plant.

Companies shipping raw condensate in automobile trucks distances of 2 to 40 miles report losses in loading, transportation, and unloading of 2 to 7 per cent. Those delivering their product through pipe lines 1 to 40 miles long report losses of 1 to 6 per cent, depending on the length of the lines, the amount of leakage from them, and the pressure necessary to force the liquid through.

## EASTERN PRACTICE.

Many plants in the eastern fields ship raw condensate by pipe line and trucks, as in California practice, with losses the same or slightly greater in amount than those quoted, owing to the raw products having higher gravities and vapor tensions. One large oil company has recently laid pipe lines to a number of the fields in northern and western Pennsylvania for the purpose of collecting the raw condensate produced in those fields and which was formerly hauled to market in trucks. Well-constructed pipe lines will undoubtedly minimize losses from handling condensate produced in this district.

## OKLAHOMA PRACTICE.

Casing-head gasoline producers in Oklahoma estimate the total loss as varying between 10 and 40 per cent. The losses during weathering of the blended product run from 10 to 20 per cent, depending on the gravity of the raw product and the vapor tension of the blend. Often heating with steam is necessary, before loading the condensate into tank cars, to bring the vapor tension within the limits required by the railroad shipping rules, especially in cold weather, when weathering will not bring the blended stock to the desired condition.

The loss in this field due to transferring the product from the plant storage tanks to loading or blending stations varies from 2 to 7 per cent, and in loading from a rack to cars, between 1 and 5 per cent.

The loss during shipment in standard tank cars is variously given as being between 2 and 10 per cent, with an average of approximately 6 per cent, the loss depending much on the distance and length of time used in haulage, the atmospheric temperatures encountered, and the condition of the tank used for shipment.

The so-called thermos cars, an insulated tank car, have given very satisfactory returns on their cost to certain producers using them, who report a maximum outage (loss in transit) of  $2\frac{1}{2}$  per cent when used for long shipments in hot weather, and report instances of no outage on short hauls in moderate, rainy, or cold weather. The railroad rules governing shipments in insulated cars are more in favor of the shipper in regard to vapor pressures, allowing 15 pounds as the maximum in place of 10 pounds as in standard cars.

The losses in blending and shipping in the Mid-Continent field may be generalized as follows:

	Per cent.
Weathering.....	5 to 20
Transferring to loading station.....	2 to 7
Loading in car tanks.....	1 to 5
Shipping in standard cars.....	2 to 10
Total losses.....	10 to 42

Plants treating gas that contains large proportions of the lighter fractions and using pressures and temperatures that will precipitate these fractions produce the "wildest" condensate and in consequence suffer the greatest losses. As the converse of this practice a single-stage plant (No. 76 in the tables) in the Mid-Continent field, mentioned in several places throughout this paper, produces a condensate having a gravity of  $79^{\circ}$  B. and a vapor tension of about 5 pounds that is shipped in standard tank cars with a total loss of 2 to 3 per cent, including the losses from being transferred several miles through pipe lines to the loading racks and from loading into the cars.

#### NAPHTHA USED AS BLENDING STOCK.

To form an ideal motor fuel, the distillate or naphtha used in blending should be one that will give the mixture a uniform series of fractions between the temperatures at which distillation begins and finishes, with none of the fractions with boiling points so high as to cause incomplete combustion and carbon deposits in motor cylinders.

To blend and weather condensate to correspond with the above conditions is possible, but such practice, because of the great waste and expense, is followed only in blending special gasolines for engine or speed tests. Also, in making straight refinery distilled gasoline, because of the increased demand for motor fuel, more and more of the heavier distillates have been cut into the motor-fuel fractions, causing a lower gravity and a higher end point.



Rittman, Dean, and Jacobs <sup>a</sup> have shown clearly the differences in still-run and blended gasolines (see fig. 13) as they are put upon the market. They state that the blended casing-head products have larger percentages distilling below 50° C. but have longer distillation ranges, which tend to make the slope of the temperature-percentage curves for these gasolines flatter than those of straight refinery products. They also state that any gasoline having an unusually large distillation cut below 50° C. and with considerable percentages distilling within the temperature ranges of 150° to 175° C. and 175° to 200° C., and being deficient in constituents boiling at intermediate

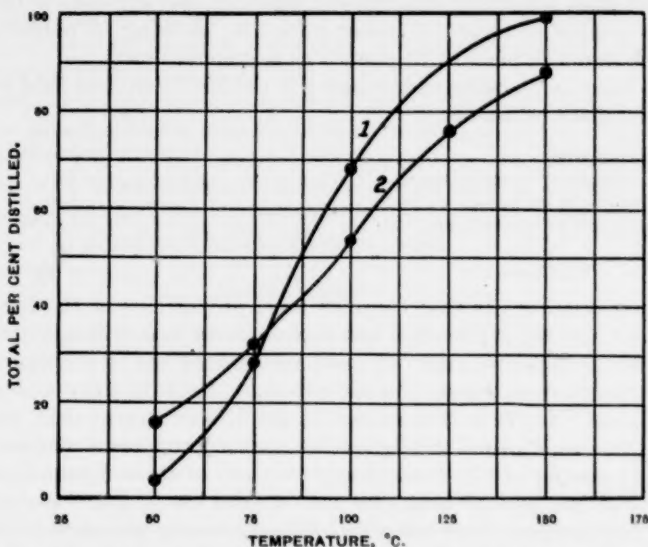


FIGURE 13.—Curves showing volatility ranges of refinery and of casing-head gasoline. 1, refinery gasoline; 2, casing-head gasoline. The flatter slope of the curve for casing-head gasoline shows that the content of both low and high boiling constituents is greater in the blended gasoline. After Rittman.

points of the distillation, may be classed as one of these blended products.

The naphthas or distillates being used for blending are those fractions that distill from crude oil after the cuts marketed as "straight still-run" gasoline have distilled off. The naphthas made from eastern and Mid-Continent crudes range in gravity from 46° to 60° B., whereas those made from the asphaltic base California crude oils range between 42° and 52° B. The difference in the eastern and western distillates is due to the fact that the crude oils in the different fields differ in character, having paraffin, asphaltic, or mixed bases.

<sup>a</sup> Rittman, W. F., Dean, E. W., and Jacobs, W. A., Physical and chemical properties of gasolines sold throughout the United States during the calendar year 1915: Tech. Paper 163, Bureau of Mines, 1916, p. 27.



The eastern and the California naphthas used in blending have approximately the same end points, although the gravities differ  $7^{\circ}$  to  $10^{\circ}$  B.; also the blends formed have different gravities, although the end points, power developed per gallon, and the completeness of combustion of the mixtures are practically similar. The differences in the specific gravities of the various cuts of similar end points from the different crudes decreases as the cuts become lighter.

Mid-Continent crudes having mixed bases vary between California and Pennsylvania crude, and have gravity and end point ratios between the two extremes stated above.

Certain companies in buying blended gasoline specify that the product shall have a gravity of not less than  $67^{\circ}$  B. and an upper end point not more than  $400^{\circ}$  F., which will require that naphtha with a gravity of about  $55^{\circ}$  B., if from Mid-Continent crude, or  $48^{\circ}$  B., if from California, be used in making the mixture.

Numerous blending plants, however, use distillates with as low gravity and as high end point as the kerosene fractions, and, as far as is known, find no trouble in marketing such blends. In using naphthas for blending it has been found that the heavier naphthas give better results than the lighter ones in lowering the vapor tension of the mixture, for equal quantities put in, the heavy fractions having a tendency to "hold down" the light fractions.

#### PROPORTIONS IN BLENDS.

In general it may be stated that blended gasoline usually consists of a mixture of half casing-head gasoline and half naphtha or distillate, but the proportions vary, depending upon the gravity and vapor tension of both constituents, blending being carried to a point, in conjunction with weathering, that brings the product within the shipping rules and shows maximum profits to the producers.

#### STRATIFICATION OF BLENDED GASOLINE.

In many quarters belief has been expressed that in blended gasoline the light condensate fractions separate from the heavier distillate fractions, causing stratification. The writer could find no direct evidence that such stratification takes place, and interviewed many operators and blenders who had made various tests and were unable to find such a condition. It is true that owing to change of temperature, in a closed tank, the lighter fractions at times vaporize and condense on the sides of the container and drain down, floating in a thin layer on top of the liquid. This condition may have given rise to the belief regarding stratification, but, as shown, is not due to separation of the two or more blended constituents through differences in their gravities. All fractions of petroleum oils are gen-

orally considered as soluble, one in the other, and a blend of two or more fractions such as naphtha and condensate should not separate or stratify. All evidence obtainable indicates that no such stratification actually takes place in blended motor fuels through the difference in specific gravity of the members blended. A test made on a California blended product and reported to the writer showed no separation. The blend, which was a small quantity of condensate with a gravity of 105° B. and a large quantity of distillate with a gravity of 48° B., was placed in a 10-barrel tank and tested after standing one week without being disturbed. Samples drawn from the top and bottom had specific gravities differing only 0.07° B. This blend found a ready market as fuel for motor trucks.

The naphthas used and the blends marketed at the present time depend to no small extent on the market conditions of the heavier distillates. Naphthas that can be obtained in quantity easily and regularly, thus insuring a steady supply, are often chosen in preference to a more perfect blending stock, supplies of which can not be depended upon.

#### **COSTS OF COMPRESSION PLANTS.**

The widely varying conditions under which compression plants are being installed, both as to situation and the machinery and the steel markets, make estimates of the costs of plants so uncertain that the subject will be undertaken with the idea of showing the costs of plants recently installed, of which the writer has knowledge, rather than to attempt to estimate costs in general for present or future installations.

An operator in the Mid-Continent field who has built and is running three plants computes plant construction costs on a unit basis and gives the costs of one unit that will treat 400,000 to 500,000 cubic feet of gas daily, as follows: One single-stage unit, compressing the gas to a pressure of 75 or 90 pounds, \$8,000 to \$9,000; one two-stage unit compressing to 200 or 250 pounds, \$15,000 to \$18,000. Vacuum pumps at the compression plants are included in this estimate, but not gathering lines with their pumps, or the expansion engines that are used at the plants. On this basis, a 1,000,000-foot plant compressing gas to a pressure of 250 pounds would cost approximately \$36,000, or \$36 per 1,000 feet of capacity.

The expense of construction and equipment of a plant compressing 1,250,000 cubic feet of gas daily to 250 pounds, put into commission in June, 1916, was stated to be \$36,570, divided as follows:

*Cost of compression plant with a capacity of 1,250,000 cubic feet.*

Machines, engines, compressors, water pumps, and air pumps and tanks.....	\$18,240
Pipe and fittings, engine and compressor connections, cooling coils and double-pipe coils.....	1,534
Building compressor room with steel frame, cooling tower, accumulator tank and storage housing, auxiliary engines and pumps.....	6,756
Gathering lines.....	3,797
Tankage.....	1,105
Gas traps.....	700
Electric plant.....	395
Labor, carpenter work; pipe-fitting; concrete, etc.; setting engines.....	4,043
Total.....	36,570

No expansion set is included in this estimate, but when the capacity of the plant was doubled later in the same year a simple single-stage compressor was installed as an expansion engine and is used to expand all of the gas treated, or 2,500,000 cubic feet. The construction of the first half of the plant shows a cost of \$29 per 1,000 feet capacity. The entire cost of the plant after the original capacity was doubled and an expansion engine installed is approximately \$60,000, or \$24 per 1,000 feet capacity.

Another plant with a total capacity of 2,500,000 feet, built during the same period, using the same pressures and very similar to the plant described above, in units and "hook-up" (compressor and engine drive), but using a drilling engine as an expander, cost \$55,000, or \$22 per thousand feet capacity.

The cost per 1,000 feet of capacity of plants treating small quantities of gas, 100,000 to 250,000 cubic feet daily, is relatively higher; instances having come to the attention of the writer of costs of \$40 or \$50 per 1,000 feet capacity for plants of that size.

One small plant—a 250,000-foot plant compressing gas to 250 pounds—including an expansion engine, cost \$11,000, or more than \$44 per 1,000 feet of capacity.

Plants treating small quantities of gas under pressures obtained by single-stage compressors and having simple cooling systems, such as are found in many eastern fields, notably Sistersville, W. Va., cost much less than is indicated by the above estimates.

No estimate of costs of gathering systems, with vacuum stations and booster compressors, can be made, as the conditions vary from a few hundred feet of 6-inch lines to lines of 8 and 10 inches diameter extending 5 to 10 miles from the plant and having as many as 30 pumps and "booster" machines forcing the gas through the mains and maintaining low pressures on the wells.

## Report sheet used at compression plant in California.

DAILY REPORT. On tour..... Date.....  
 Gasoline Plant C, No. 1. First engineer..... Third engineer.....  
 Gas from wells No..... Second engineer..... Fireman.....

## MACHINE REPORT.

		Number of machine.										OIL USED—GALLONS.									
		1		2		3		4		5						6		7		8	
SHUT DOWNS.		Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.	Hours.	Min-utes.
For shift.....																					
For month forwarded.....																					
Total for month.....																					
Machine No.....		1	2	3	4	5	6	7	8	9	10										
Time of reading.....		3																			
		6																			
		9																			
		12																			
		For shift.....										Steam cylinder.		Journal.		Compression and gas cylinder.		Glycerin.			
		For month forwarded.....																			
		Total for month.....																			
		Total for year.....																			

GAS TEMPERATURES—DISCHARGE FROM LOW AND HIGH PRESSURE CYLINDERS.

Machine No.....	1		2		3		4		5		6		7		8		9		10	
	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.	Inter-mediate.	High.
Time of reading.....	3	6	0	6	12															

EXPANSION SET—TEMPERATURES AND PRESSURES.

TEMPERATURES AND PRESSURES.				EXPANSION SET—TEMPERATURES AND PRESSURES.			
Atmospheric temperature.	Cooling water.	Scrubber.		High-pressure Inlet.	Intermediate expansion.		Bess. coil No. 1.
		Pressure.	Temperature.		Pressure.	Temperature.	
Time of reading.....	3	6	9	12			

PRODUCTION REPORT.

PRODUCTION REPORT.		REMARKS:	
Gallons.	Gravity.	Gallons.	Gravity.
Low pressure.....			
High pressure.....			
Coil 1.....			
Coils 2 and 3.....			
Exhaust.....			
For shift.....		Boilers cleaned.....	
For month total.....		Boilers repaired.....	
For year forward.....		Furnace repaired.....	
For year total.....		Water used.....	
Certified correct by.....		First Engineer.	
		Sheet No.....	

## THE ADVANCEMENT OF THE INDUSTRY.

Since the first commercial gas compression plants were established, about 15 years ago, in the eastern oil fields, marked advancement has been made in the mechanical and commercial phases of the natural-gas gasoline industry.

Up to about five or six years ago, most of the plants consisted of the simplest forms of gas pumps, single-stage compressors, and cooling coils, were operated only on rich casing-head gas that would produce 4 to 6 gallons of condensate, and had a capacity of not more than 200,000 or 300,000 cubic feet daily.

At present plants are in operation treating 6,000,000 to 9,000,000 cubic feet daily of gas yielding as low as 1 gallon of condensate per 1,000 cubic feet, using pressures of 250 and 300 pounds per square inch in two stages of compression, with elaborate systems of cooling the gas with water before compression and after each stage of compression. The water used is cooled below normal temperatures by induced aeration and radiation.

In some plants the gas is further cooled by expanding the dry treated gas through the cylinders of an expansion engine and using the cold expanded gas to cool the high-pressure gas from the water-cooled coils. Temperatures as low as 0° F. are often obtained, causing the precipitation of nearly all the condensable fractions commercially valuable for making gasoline.

## FORMULAS AND TABLES GOVERNING THE FLOW OF GAS IN PIPE LINES.

Formulas governing the flow of gas in pipes have been worked out by Weymouth and discussed by him in a paper<sup>a</sup> published by the American Society of Mechanical Engineers. These formulas with that part of Weymouth's report that relates to the flow of gas in pipe lines are given in the following:

### TRANSMISSION OF NATURAL GAS.

By THOMAS R. WEYMOUTH.

In the design of pipe lines for the transmission of natural gas from the field to the points of consumption it is necessary to make use of a formula expressing the relations to each other of the quantity and initial and final pressures of the gas, and the diameter and length of line. Many such formulas have been proposed giving widely differing results. In nearly all of them the flow is stated as varying as the square root of the fifth power of the pipe diameter, and either the coefficient of friction is considered constant, or a different coefficient is given for each diameter of pipe. This serves well enough where the diameter is known and any one of the other quantities expressed by the formula is desired, but is somewhat awkward when it is desired to ascertain the diameter of line necessary to meet the other given conditions.

The author has derived a new formula which he believes expresses the relationship of the quantities involved even more closely than any heretofore offered. It is based on isothermal flow, and the variation in the value of the coefficient of friction is provided for without complicating the formula, yet permitting the required diameter of line to be ascertained readily.

The expression for the initial velocity of any gas flowing in a pipe is given by Unwin<sup>b</sup> as

$$(1) \quad u_1 = \sqrt{\frac{gC T m (P_1^2 - P_2^2)}{f l P_1^2}}$$

$u_1$ =initial velocity, in feet per second.

$g$ =acceleration due to gravity.

$C$ =thermodynamic constant of the flowing gas  $= \frac{PV}{T}$

$T$ =absolute temperature of gas.

$m$ =hydraulic mean radius of the pipe  $= \frac{D}{4}$ .

$P_1$ =absolute initial pressure of the gas, in pounds per square inch.

$P_2$ =absolute final pressure of the gas, in pounds per square inch.

$f$ =coefficient of friction.

$l$ =length of line, in feet.

<sup>a</sup> Weymouth, T. R., Problems in natural-gas engineering: Trans. Am. Soc. Mech. Eng., vol. 34, 1912, pp. 185-234.

<sup>b</sup> Unwin, W. C., Transmission and distribution of power from central stations, 1892, p. 259.



Let

$C_a$  = thermodynamic constant for air.

$G$  = specific gravity of flowing gas, air = 1.0.

$D$  = diameter of pipe, in feet.

$d$  = diameter of pipe, in inches.

$$\text{Then } C = \frac{C_a}{G}, \text{ and } m = \frac{D}{4} = \frac{d}{48}$$

Hence

$$(2) \quad u_1 = \left[ \frac{g C_a T (P_1^2 - P_2^2) d}{48 G f P_1^2} \right]^{\frac{1}{2}}$$

If  $q$  = quantity of gas flowing per second, based on absolute pressure and temperature of  $P_o$  and  $T_o$ ,

$$A = \text{area of cross section of pipe in square feet} = \frac{\pi d^2}{4 \times 144}$$

Then

$$(3) \quad q = u_1 A \frac{P_1 T_o}{P_o T} = u_1 \left( \frac{\pi d^2}{4 \times 144} \right) \frac{T_o P_1}{P_o T} \left( \frac{\pi}{576} \right) \frac{T_o}{P_o} \left[ \frac{g C_a (P_1^2 - P_2^2) d^5}{48 G T f l} \right]^{\frac{1}{2}}$$

If

$Q$  = flow in cubic feet per hour, based on  $P_o$  and  $T_o$ , and

$L$  = length of line, in miles,

Then

$$l = 5280 L$$

and

$$Q = 3,600 q$$

$$(4) \quad Q = \frac{3,600 \pi}{576 \sqrt{48 \times 5280}} \frac{T_o}{P_o} \sqrt{g C_a \left[ \frac{(P_1^2 - P_2^2) d^5}{G T f L} \right]^{\frac{1}{2}}}$$

Taking  $g = 32.17$  and  $C_a = 53.33$ ,

$$(5) \quad Q = 1.6156 \frac{T_o}{P_o} \left[ \frac{(P_1^2 - P_2^2) d^5}{G T f L} \right]^{\frac{1}{2}}$$

Experiments on the flow of air in pipes of different diameters indicate that the coefficient of friction  $f$  is a variable, decreasing with increasing diameters of line. A great many such experiments have been collected and published in "Compressed Air," by Elmo G. Harris, from which, by the use of equation 5, the coefficients of friction have been computed and plotted in figure 14.

In the reports of these tests no statements were made as to the method of measuring the quantity of gas flowing, and it is quite probable that many of the results are inaccurate in this respect. Notwithstanding this, however, the nature of the variation of  $f$  with the diameter is evident, and the curve represented by the equation

$$f = \frac{0.008}{\sqrt[3]{d}}$$

gives a fair average of the loci of the points plotted. Inserting this value of  $f$  in equation 5, the expression becomes

$$(6) \quad Q = 18.062 \frac{T_o}{P_o} \left[ \frac{(P_1^2 - P_2^2) d^{5\frac{2}{3}}}{G T L} \right]^{\frac{1}{2}}$$

Equation 6 is the general formula for the flow of gas in long pipe lines.

In 1901 Forrest M. Towl conducted an extended test on an 8-inch line, 70 miles long, supplying gas to Buffalo, the results of which were published in a bulletin issued by Columbia University in 1911. Previous to the test the line had been repaired and tested for leaks, and was known to be practically gas-tight. The flow was measured by standardized Pitot tubes, which gave results accurate within less than 1 per cent. The specific gravity  $G$  of the flowing gas was 0.64, its temperature

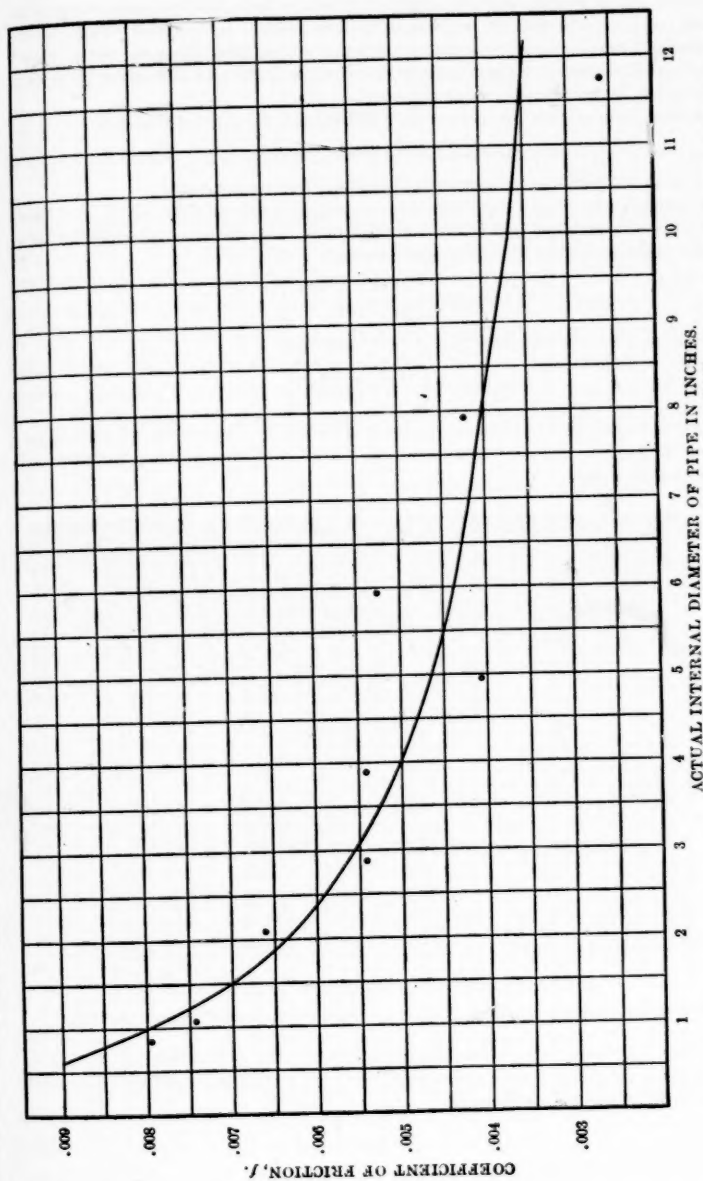


FIGURE 14.—Curve for coefficient of friction for flow of gas in pipes. Coefficient of friction  $f$  equals  $\frac{0.008}{d^{1.75}}$ , where  $d$  is internal diameter of pipe in inches.

32° F., or  $T=492^\circ$  absolute. The temperature basis on which the gas was measured was 50° F., or  $T_0=510^\circ$  absolute, and the pressure basis was 4 ounces above 14.4 pounds, or  $P_0=14.65$  pounds per square inch absolute. In a length of pipe 70.32 miles long  $P_1$  and  $P_2$  were 210 and 41 pounds per square inch absolute, respectively. The actual diameter of the pipe was 7.981 inches, and the rate of flow by Pitot tube was found to be 221,000 cubic feet per hour.

Inserting these quantities in formula 1 and solving for flow, it becomes

$$Q=221,400 \text{ cubic feet per hour,}$$

or less than 0.2 per cent greater than the actual flow as measured.

Assuming gas standard conditions of measurement basis, namely, 60° F. and 14.65 pounds absolute pressure, and that the average flowing temperature of the gas throughout the year will be 40° F., the formula becomes

$$(7) \quad Q=28.66 \left[ \frac{(P_1^2 - P_2^2) d^{5/4}}{LG} \right]^{1/4}$$

and, if an average specific gravity of 0.60 be assumed,

$$(8) \quad Q=37 \left[ \frac{(P_1^2 - P_2^2) d^{5/4}}{L} \right]^{1/4}$$

Formula 8 is of practical use in designing lines for the transmission of natural gas. It is used as given, or in a transposed form, for all problems relating to single lines of uniform diameter.

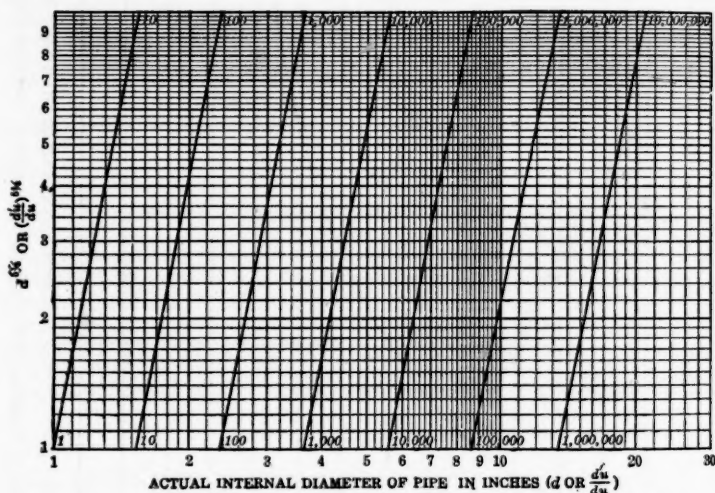


FIGURE 15.—Broken curve showing values of equivalent lengths of different diameters of pipe.

If a line is composed of several lengths,  $L_1, L_2, \dots, L_n$ , of diameters  $d_1, d_2, \dots, d_n$ , each of these lengths must be transformed into an equivalent length of one chosen diameter, by means of the formula

$$(9) \quad L_n^1 = L_n \left[ \frac{d_n^1}{d_n} \right]^{5/4}$$

These equivalent lengths added together will give  $L=L_1, L_2, \dots, L_n$ , which is the value for  $L$  in formula 8.

Values of equivalent lengths for different diameters can be most conveniently ascertained by the use of the curves in figure 15, which consist of plots of the values of  $d^5$  for varying values of  $d$ . Values taken from these curves are convenient to use directly in the pipe-line formula, equation 8, whereas they are most simply used in equation 9 as values of the  $5\frac{1}{2}$  power of the diameter ratios.

TABLES.

VOLUME OF FLOW FROM DIFFERENT SIZES OF PIPE AT VARIOUS PRESSURES.

The number of cubic feet of gas of a specific gravity of 0.6 (air equaling 1.0) that will flow from the mouth of a 1-inch pipe in 24 hours is given in Table 10 following. The pressure of the container is taken as 4 ounces above an assumed atmospheric pressure of 14.4 pounds to the square inch, and the temperature of the flowing gas and the container is assumed to be 60° F. If the diameter of the pipe is other than 1 inch, multiply the discharge value given in Table 10 by the square of the actual diameter of the pipe, as found in Table 11.

TABLE 10.—Rate of flow of natural gas in pipe 1 inch in inside diameter at various pressures.<sup>a</sup>

Observed gage pressure.			Flow, cubic feet per day.	Observed gage pressure.			Flow, cubic feet per day.
Inches of mercury.	Inches of water.	Pounds per square inch.		Inches of mercury.	Inches of water.	Pounds per square inch.	
-----	0.1	0.0036	12,390	10.17	-----	5.0	436,200
-----	0.2	0.0073	17,560	11.18	-----	5.5	456,200
-----	0.3	0.0109	21,480	12.20	-----	6.0	473,750
-----	0.5	0.0182	27,726	13.21	-----	6.5	489,840
0.05	0.7	0.0254	32,820	14.23	-----	7.0	505,920
0.7	1.0	0.0374	39,210	15.25	-----	7.5	522,010
0.11	1.5	0.0545	48,030	16.26	-----	8.0	538,500
0.15	2.0	0.0727	55,340	18.30	-----	9.0	565,970
0.22	3.0	0.109	67,910	20.33	-----	10.0	589,270
0.29	4.0	0.145	78,910	24.39	-----	12.0	633,340
0.37	5.0	0.182	87,670	28.46	-----	14.0	675,000
0.52	7.0	0.254	103,500	32.53	-----	16.0	713,550
0.74	10.0	0.3636	123,000	36.60	-----	18.0	748,650
1.02	13.75	0.50	146,220	40.66	-----	20.0	779,350
1.52	20.62	0.75	175,350	50.81	-----	25.0	845,150
2.03	27.5	1.00	201,800	61.00	-----	30.0	902,180
3.05	41.25	1.5	247,840	71.16	-----	35.0	954,820
4.07	55.0	2.0	285,130	-----	-----	40.0	999,680
5.08	68.75	2.5	316,500	-----	-----	45.0	1,039,700
6.10	82.50	3.0	344,350	-----	-----	50.0	1,072,000
7.12	96.25	3.5	370,000	-----	-----	55.0	1,106,880
8.13	110.0	4.0	393,000	-----	-----	60.0	1,137,600
8.15	-----	4.5	415,270	-----	-----	-----	-----

<sup>a</sup> Thompson, A. B., Oil-field development and petroleum mining, Lind., 1916, pp. 578-579; quoted by Johnson, R. H., and Huntley, L. G., Oil and gas production, 1916, p. 9.

In correcting for temperature of flowing gas, where observed, of 30°, 40°, 50°, and 60° F., add 4, 3, 2, and 1 per cent, respectively. To change the result, as found by this table, to that for any other specific

gravity of gas than 0.6, multiply by  $\sqrt{\frac{0.6}{\text{specific gravity of gas}}}$

TABLE 11.—Multipliers for pipe of diameters other than 1 inch.<sup>a</sup>

Diam-eter of opening.	Multi-plier.	Diam-eter of opening.	Multi-plier.	Diam-eter of opening.	Multi-plier.	Diam-eter of opening.	Multi-plier.	Diam-eter of opening.	Multi-plier.
<i>Inch.</i>		<i>Inches.</i>		<i>Inches.</i>		<i>Inches.</i>		<i>Inches.</i>	
1	0.0038	1	1.00	4	16.00	6	36.00	8	64.00
1 1/4	0.0156	1 1/4	2.25	4 1/4	18.00	6 1/4	39.00	8 1/4	68.00
1 1/2	0.0625	2	4.00	5	25.00	6 1/2	43.90	9	81.00
1 3/4	0.2500	2 1/4	6.25	5 1/4	26.90	7	49.00	10	100.00
2	0.5625	3	9.00	5 1/2	31.60	7 1/4	52.50	12	144.00

<sup>a</sup> Johnson, R. H., and Huntley, L. G., Oil and gas production, 1916, p. 355.TABLE 12.—Variation in volume of 100 cubic feet (100 per cent) of gas at constant temperature under various gage pressures.<sup>b</sup>

Pressure per square inch.	Volume.	Pressure per square inch.	Volume.	Pressure per square inch.	Volume.
<i>Ounces.</i>	<i>Per cent.</i>	<i>Pounds.</i>	<i>Per cent.</i>	<i>Pounds.</i>	<i>Per cent.</i>
0.....	100.0	4.....	78.6	20.....	42.3
2.....	99.1	5.....	74.6	30.....	32.8
4.....	98.3	6.....	71.0	40.....	23.8
6.....	97.5	7.....	67.7	50.....	22.7
8.....	96.7	8.....	64.7	75.....	16.8
10.....	95.9	9.....	62.0	100.....	12.8
12.....	95.1	10.....	59.5	150.....	8.9
14.....	94.3	12.....	55.0	200.....	6.8
<i>Pounds.</i>					
1.....	93.6	14.....	51.5	250.....	5.5
2.....	88.0	16.....	47.8	300.....	4.6
3.....	83.0	18.....	44.9	400.....	3.3

<sup>b</sup> Johnson, R. H., and Huntley, L. G., Principles of oil and gas production, 1916, p. 355.

## CHANGE IN VOLUME OF GAS WITH CHANGE IN TEMPERATURE.

In Table 13 following, the standard is taken at 60° F. and 14.4 inches of mercury plus 0.25=14.65 inches of mercury. Absolute zero=460° F. below freezing=488° below 60° F. The specific gravity of the natural gas is taken at 0.6, air being 1. The same 1,000 cubic feet of gas at 60° F. will measure 1,041 cubic feet at 80° and 959 cubic feet at 40°. The percentage of the decrease and increase below or above 60° F.; the specific gravity of the gas at temperatures below and above 60° F.; also weight of 1,000 cubic feet of gas and air at the different temperatures is shown. For each degree there is a change of 0.002056 in volume.

TABLE 13.—*Change in volume of 1,000 feet of air or natural gas, owing to change in temperature.<sup>a</sup>*

Tempera- ture.	Volume of 1,000 cubic feet of gas measured at tem- peratures other than 60° F.	Loss or gain in volume.	Specific gravity (specific gravity= 0.6 at 60° F.).	Weight of 1,000 cubic feet of gas (0.6 specific gravity at 60° F.).	Weight of 1,000 cubic feet of air.
° F.	Cubic feet.	Per cent.		Pounds.	Pounds.
0	877	-12.3	0.6841	58.82	85.97
10	897	-10.3	0.6689	56.41	84.33
20	918	-8.2	0.6536	54.04	82.69
32	943	-5.7	0.6362	51.36	80.73
40	959	-4.1	0.6256	49.68	79.43
50	980	-2.0	0.6124	47.63	77.77
60	1,000	0.0	0.6000	45.67	76.12
70	1,020	+2.0	0.5879	43.78	74.48
80	1,041	+4.1	0.5763	41.95	72.83
90	1,061	+6.1	0.5652	40.23	71.10
100	1,082	+8.2	0.5545	38.56	69.55
110	1,102	+10.2	0.5442	36.95	67.90
120	1,122	+12.3	0.5343	35.40	66.26
130	1,143	+14.3	0.5247	34.10	64.62
140	1,163	+16.3	0.5157	32.47	62.98
150	1,184	+18.4	0.5067	31.07	61.33
160	1,204	+20.4	0.4981	29.72	59.69
170	1,225	+22.5	0.4898	28.42	58.05
180	1,245	+24.5	0.4818	27.17	56.40
190	1,265	+26.6	0.4739	25.94	54.76
200	1,285	+28.6	0.4665	24.78	53.12
210	1,306	+30.7	0.4591	23.63	51.48
212	1,311	+31.1	0.4576	23.41	51.16

<sup>a</sup> Westcott, H. P., *Handbook of natural gas*, Erie, Pa., 1913, p. 379.

SPECIFIC GRAVITY AND BAUMÉ SCALE COMPARED.

Table 14 shows Baumé hydrometer readings from 10° to 90° B. with corresponding specific gravity, and also the corresponding weight of gasoline in pounds per United States gallon at 60° F.

TABLE 14.—*Baumé scale and specific gravity equivalents.*<sup>a</sup>

° B.	Specific gravity.	Pounds in gallon.	° B.	Specific gravity.	Pounds in gallon.	° B.	Specific gravity.	Pounds in gallon.
10	1.000	8.33	37	0.8383	6.99	64	0.7216	6.01
11	0.9929	8.27	38	0.8333	6.94	65	0.7179	5.98
12	0.9859	8.21	39	0.8284	6.90	66	0.7143	5.96
13	0.9790	8.15	40	0.8235	6.86	67	0.7107	5.92
14	0.9722	8.10	41	0.8187	6.82	68	0.7071	5.89
15	0.9655	8.04	42	0.8140	6.78	69	0.7035	5.86
16	0.9589	7.99	43	0.8092	6.74	70	0.7000	5.83
17	0.9524	7.93	44	0.8046	6.70	71	0.6965	5.80
18	0.9459	7.88	45	0.8000	6.66	72	0.6931	5.77
19	0.9396	7.83	46	0.7955	6.62	73	0.6897	5.74
20	0.9333	7.77	47	0.7910	6.59	74	0.6863	5.71
21	0.9272	7.72	48	0.7865	6.55	75	0.6829	5.69
22	0.9211	7.67	49	0.7821	6.51	76	0.6796	5.66
23	0.9150	7.62	50	0.7778	6.48	77	0.6763	5.63
24	0.9091	7.57	51	0.7735	6.44	78	0.6731	5.60
25	0.9032	7.52	52	0.7692	6.40	79	0.6699	5.58
26	0.8974	7.47	53	0.7650	6.37	80	0.6677	5.55
27	0.8917	7.42	54	0.7609	6.33	81	0.6635	5.52
28	0.8861	7.38	55	0.7568	6.30	82	0.6604	5.50
29	0.8805	7.33	56	0.7527	6.27	83	0.6573	5.47
30	0.8750	7.29	57	0.7487	6.23	84	0.6542	5.45
31	0.8696	7.24	58	0.7447	6.20	85	0.6512	5.42
32	0.8642	7.20	59	0.7407	6.17	86	0.6482	5.40
33	0.8589	7.15	60	0.7368	6.13	87	0.6452	5.37
34	0.8537	7.11	61	0.7330	6.10	88	0.6422	5.35
35	0.8485	7.07	62	0.7292	6.07	89	0.6393	5.32
36	0.8434	7.02	63	0.7254	6.04	90	0.6364	5.30

<sup>a</sup> U. S. Bureau of Standards, United States standard tables for petroleum oils, Circular 57, 1916, p. 57.

NOTE.—Degrees Baumé may be converted to specific gravity by adding 130 to the number of degrees Baumé and dividing the sum by 140.

#### CAPACITIES OF ORIFICES.

Table 15 shows the capacities of orifices, for testing small flows of natural gas, ranging from one-eighth of an inch to 1½ inches in diameter in plates one-eighth of an inch thick.



TABLE 15.—Capacities of orifices for testing flows of natural gas from small gas wells and casing-head gas from oil wells.<sup>a</sup>  
[Temperature, 60° F.; atmospheric pressure, 14.4 pounds per square inch.]

THREE-EIGHTHS-INCH ORIFICE IN PLATE ONE-EIGHTH INCH THICK.

Pressure.	Capacity, in cubic feet per 24 hours, at specific gravity of—											
	0.6	0.65	0.7	0.75	0.8	0.85	0.9	0.95	1	1.05	1.10	1.15
Inches of water.												
0.5.....	2,270	2,180	2,100	2,030	1,970	1,910	1,850	1,810	1,760	1,720	1,680	1,640
1.0.....	3,460	3,330	3,200	3,090	2,990	2,910	2,830	2,750	2,680	2,620	2,550	2,500
1.5.....	4,310	4,140	3,990	3,860	3,730	3,620	3,520	3,420	3,330	3,260	3,180	3,110
2.0.....	4,890	4,690	4,470	4,320	4,180	4,060	3,940	3,840	3,740	3,650	3,560	3,480
2.5.....	5,400	5,190	4,960	4,800	4,640	4,500	4,370	4,260	4,160	4,060	3,960	3,880
3.0.....	5,870	5,650	5,420	5,250	5,090	4,940	4,790	4,680	4,570	4,460	4,350	4,260
3.5.....	6,290	6,060	5,830	5,650	5,490	5,330	5,170	5,060	4,950	4,840	4,730	4,630
4.0.....	6,650	6,410	6,170	5,980	5,800	5,630	5,460	5,340	5,220	5,100	4,980	4,870
4.5.....	7,010	6,760	6,510	6,310	6,120	5,940	5,760	5,640	5,520	5,400	5,280	5,160
5.0.....	7,380	7,120	6,870	6,660	6,460	6,270	6,090	5,960	5,840	5,720	5,600	5,480
5.5.....	7,750	7,490	7,230	7,020	6,820	6,630	6,450	6,320	6,200	6,080	5,960	5,840
6.0.....	8,120	7,860	7,600	7,390	7,190	7,000	6,820	6,690	6,570	6,450	6,330	6,210

ONE-HALF-INCH ORIFICE IN PLATE ONE-EIGHTH INCH THICK.

0.5.....	4,490	4,320	4,160	4,020	3,890	3,770	3,670	3,570	3,480	3,400	3,330	3,260
1.0.....	6,360	6,010	5,790	5,600	5,440	5,260	5,110	4,970	4,850	4,730	4,620	4,520
1.5.....	7,940	7,590	7,310	7,070	6,840	6,640	6,450	6,280	6,130	6,000	5,880	5,760
2.0.....	9,140	8,790	8,490	8,240	7,990	7,760	7,550	7,360	7,200	7,050	6,910	6,770
2.5.....	10,220	9,820	9,470	9,140	8,830	8,590	8,370	8,160	7,970	7,790	7,620	7,450
3.0.....	11,150	10,720	10,330	10,000	9,690	9,410	9,150	8,900	8,660	8,430	8,240	8,060
3.5.....	12,030	11,550	11,130	10,750	10,410	10,100	9,810	9,550	9,310	9,080	8,880	8,690
4.0.....	12,860	12,290	11,850	11,440	11,060	10,730	10,430	10,170	9,940	9,700	9,490	9,290
4.5.....	13,640	13,050	12,600	12,190	11,810	11,460	11,140	10,860	10,600	10,350	10,120	9,900
5.0.....	14,380	13,770	13,300	12,880	12,490	12,130	11,800	11,500	11,230	10,980	10,740	10,500
5.5.....	15,090	14,460	14,000	13,570	13,170	12,800	12,460	12,150	11,870	11,610	11,360	11,110
6.0.....	15,760	15,120	14,680	14,240	13,840	13,470	13,130	12,820	12,540	12,280	12,030	11,780

<sup>a</sup> Wescott, H. P., Handbook of casing-head gas, 1916, pp. 56-62.

TABLE 15.—Capacities of orifices for testing flows of natural gas from small gas wells and casing-head gas from oil wells—Continued.  
THREE-FOURTHS-INCH ORIFICE IN PLATE ONE-EIGHTH INCH THICK.

Pressure.	Capacity, in cubic feet per 24 hours, at specific gravity of—												
	0.6	0.65	0.7	0.75	0.8	0.85	0.9	0.95	1	1.05	1.10	1.15	1.20
<i>Inches of water.</i>													
0.5.....	10,560	10,150	9,780	9,450	9,150	8,880	8,630	8,400	8,180	7,960	7,800	7,630	7,470
1.0.....	14,530	13,960	13,450	13,000	12,580	12,210	11,860	11,550	11,260	10,980	10,730	10,500	10,280
1.5.....	17,720	17,030	16,410	15,850	15,350	14,890	14,470	14,080	13,730	13,400	13,090	12,800	12,530
2.0.....	20,390	19,590	18,870	18,230	17,650	17,130	16,650	16,200	15,790	15,410	15,060	14,730	14,420
2.5.....	22,740	21,850	21,050	20,340	19,700	19,110	18,570	18,070	17,620	17,190	16,800	16,430	16,080
3.0.....	24,880	23,900	23,030	22,250	21,550	20,900	20,310	19,770	19,270	18,810	18,390	17,970	17,590
3.5.....	26,990	25,930	24,980	24,140	23,370	22,670	22,030	21,450	20,900	20,400	19,930	19,490	19,080
4.0.....	28,970	27,830	26,820	25,910	25,090	24,340	23,650	23,020	22,440	21,900	21,400	20,920	20,480
4.5.....	30,800	29,560	28,510	27,550	26,670	25,870	25,150	24,470	23,860	23,290	22,750	22,250	21,770
5.0.....	32,500	31,230	30,090	29,070	28,150	27,210	26,540	25,890	25,180	24,570	24,000	23,580	23,100
5.5.....	34,080	32,740	31,530	30,480	29,510	28,630	27,830	27,080	26,400	25,760	25,170	24,620	24,100
6.0.....	35,630	34,230	32,990	31,870	30,860	29,940	29,090	28,320	27,600	26,930	26,310	25,740	25,200

1-INCH ORIFICE IN PLATE ONE-EIGHTH INCH THICK.

Pressure.	Capacity, in cubic feet per 24 hours, at specific gravity of—												
	0.6	0.65	0.7	0.75	0.8	0.85	0.9	0.95	1	1.05	1.10	1.15	1.20
<i>Inches of water.</i>													
0.5.....	10,560	10,150	9,780	9,450	9,150	8,880	8,630	8,400	8,180	7,960	7,800	7,630	7,470
1.0.....	14,530	13,960	13,450	13,000	12,580	12,210	11,860	11,550	11,260	10,980	10,730	10,500	10,280
1.5.....	17,720	17,030	16,410	15,850	15,350	14,890	14,470	14,080	13,730	13,400	13,090	12,800	12,530
2.0.....	20,390	19,590	18,870	18,230	17,650	17,130	16,650	16,200	15,790	15,410	15,060	14,730	14,420
2.5.....	22,740	21,850	21,050	20,340	19,700	19,110	18,570	18,070	17,620	17,190	16,800	16,430	16,080
3.0.....	24,880	23,900	23,030	22,250	21,550	20,900	20,310	19,770	19,270	18,810	18,390	17,970	17,590
3.5.....	26,990	25,930	24,980	24,140	23,370	22,670	22,030	21,450	20,900	20,400	19,930	19,490	19,080
4.0.....	28,970	27,830	26,820	25,910	25,090	24,340	23,650	23,020	22,440	21,900	21,400	20,920	20,480
4.5.....	30,800	29,560	28,510	27,550	26,670	25,870	25,150	24,470	23,860	23,290	22,750	22,250	21,770
5.0.....	32,500	31,230	30,090	29,070	28,150	27,210	26,540	25,890	25,180	24,570	24,000	23,580	23,100
5.5.....	34,080	32,740	31,530	30,480	29,510	28,630	27,830	27,080	26,400	25,760	25,170	24,620	24,100
6.0.....	35,630	34,230	32,990	31,870	30,860	29,940	29,090	28,320	27,600	26,930	26,310	25,740	25,200

15,720  
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69,200  
74,560  
78,480  
82,200  
85,600  
88,560  
91,440  
94,280  
96,960

14-INCH ORIFICE IN PLATE ONE-EIGHTH INCH THICK.

Inches of mercury.											
0.5	67,200	64,000	62,300	60,100	58,200	56,500	54,900	53,400	52,100	50,800	49,600
1.0	95,200	91,500	88,200	85,100	82,500	80,000	77,800	75,600	73,800	72,800	70,300
1.5	116,000	112,000	108,000	104,300	101,000	97,900	95,300	92,600	90,400	88,200	86,200
2.0	134,000	129,000	124,700	120,400	116,700	113,000	110,000	107,000	104,000	101,500	99,000
2.5	149,000	143,000	138,000	133,000	128,000	123,000	118,000	113,000	108,000	104,300	101,000
3.0	164,000	157,000	152,000	147,000	142,000	137,000	132,000	127,000	122,000	117,000	112,000
3.5	178,000	171,000	165,000	159,000	154,000	149,000	145,000	141,000	137,000	133,000	129,000
4.0	190,000	183,000	176,000	170,000	165,000	160,000	155,000	150,000	145,000	140,000	135,000
5.0	212,000	204,000	197,000	190,000	184,000	178,000	173,000	168,000	163,000	158,000	153,000
6.0	233,000	224,000	216,000	208,000	202,000	195,000	189,000	183,000	177,000	172,000	166,000
7.0	251,000	242,000	233,000	225,000	218,000	211,000	205,000	198,000	192,000	186,000	180,000
8.0	269,000	259,000	249,000	240,000	233,000	226,000	220,000	213,000	207,000	201,000	195,000
9.0	285,000	274,000	264,000	255,000	246,000	239,000	233,000	227,000	220,000	214,000	208,000
10.0	301,000	289,000	279,000	269,000	261,000	253,000	246,000	239,000	233,000	226,000	220,000
11.0	315,800	303,000	292,500	282,500	273,700	265,400	258,000	250,900	244,800	238,900	233,400
12.0	328,400	315,700	304,200	293,800	284,600	276,000	268,400	261,000	254,000	248,400	242,700
14-INCH ORIFICE IN PLATE ONE-EIGHTH INCH THICK.											
Inches of water.											
0.5	32,780	31,400	30,350	29,320	28,390	27,540	26,760	26,050	25,390	24,779	24,210
1.0	46,240	44,440	42,850	41,390	40,060	38,860	37,770	36,750	35,830	34,968	34,160
1.5	56,000	54,380	52,410	50,630	49,020	47,560	46,210	44,980	43,850	42,790	41,810
2.0	64,840	62,300	60,040	58,000	56,160	54,490	52,940	51,530	50,220	49,020	47,890
2.5	72,400	69,570	67,040	64,760	62,710	60,880	59,120	57,540	56,090	54,735	53,460
3.0	77,980	74,920	72,200	69,750	67,540	65,520	63,670	61,970	60,410	58,930	57,490
3.5	84,490	81,810	78,220	75,570	73,170	70,980	68,980	67,140	65,450	63,870	62,400
4.0	91,400	87,980	84,620	81,550	78,750	76,790	74,620	72,630	70,800	69,090	67,540
4.5	97,810	93,980	90,560	87,400	84,710	82,180	79,860	77,730	75,770	73,940	72,240
5.0	103,240	99,210	95,610	92,370	89,430	86,760	84,310	82,060	80,000	78,070	76,280
5.5	107,230	103,020	99,280	95,910	92,870	90,090	87,550	85,210	83,060	81,060	79,194

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**Defendant's Exhibit 151.**

Technical Paper 214

Petroleum Technology 52

DEPARTMENT OF THE INTERIOR, Franklin K. Lane, Secretary.

BUREAU OF MINES, Van. H. Manning, Director.

**MOTOR GASOLINE — PROPERTIES, LABORATORY  
METHODS OF TESTING, AND PRAC-  
TICAL SPECIFICATIONS.**

By E. W. Dean.

(Department of the Interior seal) Washington Govern-  
ment Printing Office 1919

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# MOTOR GASOLINE; PROPERTIES, LABORATORY METHODS OF TESTING, AND PRACTICAL SPECIFICATIONS.

5

By E. W. Dean.

## FOREWORD.

This report is issued as a revised edition of Technical Paper 166, on the properties and testing of gasoline. Discussion that has lost its significance since the date of issue of Technical Paper 166 has been omitted, and much information has been added that has become of recent importance.

With conditions in the oil refining and marketing industries even more unsettled than they were at the time of issue of Technical Paper 166, anything approximating a last word on the subject treated is impossible. But because of the need of keeping the public in touch with this important and rapidly developing technical field the Bureau of Mines issues this report.

## INTRODUCTION.

One of the most desirable conditions to be attained in the development of technical or commercial undertakings is that producers and users shall be able to determine the relative desirability of commodities on the basis of simple and accurate tests. Up to a recent date such a condition has not been reached in regard to gasoline and it was believed that satisfactory specifications, based on laboratory tests, could not be written for commercial transactions in this commodity. Claims were frequently made that actual use constituted the only adequate test for the value of gasoline.

It is now definitely established that the most unreliable test in vogue for gasoline is that of the average user who "tries it out" in his car. Engine tests, if conducted in the laboratory in connection with power measurements, are still the last word in determining the utility of motor fuel, but the internal-combustion motor is so complex a mechanism that it can not be made to serve as an analytical instrument except when handled by experts. Properly interpreted results of an analysis in the chemical laboratory give more reliable information concerning the utility of a grade of gasoline than  
6 anything less than the most elaborately conducted engine-dynamometer tests, or the collective experience of a large number of users.

In the course of the past two or three years rational methods for analyzing and grading gasoline have come into vogue. Published descriptions are not, however, readily available and in addition many of the methods, though based on sound theoretical principles, have not been developed to an optimum of simplicity and reliability. The object of the present paper is to furnish information regarding the desirable properties of gasoline and the best methods of testing it. Suggestions are offered with regard to rational specifications and the interpretation to be placed upon the requirements that may be adopted.

#### ACKNOWLEDGMENT.

The bureau began its study of gasoline specifications at the suggestion of W. A. Williams, formerly chief petroleum technologist of the bureau. Much credit is due Mr. Williams and his successor, Chester Naramore, for assistance and advice in preparing this report.

To Van. H. Manning, director of the bureau, who has shown particular interest in the problem, credit is due for guidance in assembling a large part of the material presented.

W. A. Jacobs, H. H. Hill, and C. R. Bopp, of the petroleum division of the bureau, collected and analyzed samples of gasoline, thereby obtaining information of utmost importance in connection with the discussion and recommendations of this report.

Many of the tests and analytical methods described are based on the experimental work of chemists and petroleum technologists who have been kind enough to cooperate with the bureau in furnishing information. Acknowledgment of credit due these men is made in connection with descriptions of the tests.

#### NEED OF GASOLINE SPECIFICATIONS.

The bureau was originally asked to prepare specifications for Government purchases of several grades of gasoline and naphtha, and to guide State and local legislative bodies that proposed to formulate regulations for controlling the quality of gasoline. More lately the bureau has assisted in preparing specifications for the purchase of gasoline for military purposes, particularly for the Aviation Service.

#### GENERAL PROPERTIES OF SATISFACTORY GASOLINE.

The fundamental principle upon which gasoline tests and

specifications must be based is that quality is not inherent but is determined by the service required. For instance, gasoline that is entirely satisfactory in present-day cars or trucks might have been almost useless in the cars of several years ago and would not serve in airplane motors at all. Hence a discussion of the desirable properties of gasoline must be confined to general statements, and then if reduced to specifications must take into account the conditions of use. The essentially desirable properties of gasoline may be summarized briefly as follows:

1. The gasoline should not contain too large a percentage of highly volatile products, which tend to cause large evaporation losses and excessive danger in handling and storage, but should have enough volatile constituents to permit starting an engine under reasonably unfavorable conditions, without preheating.

2. The gasoline should not contain any considerable percentages of heavy or nonvolatile constituents, which after atomization into the engine cylinders can not be completely vaporized and burned.

3. The gasoline should not contain material that after combustion leaves a residue that collects in the motor.

4. The gasoline should be free from substances that attack metal, either before or after combustion. Unremoved acid (used in refining) falls under this head.

5. Neither the gasoline nor its products of combustion should have a strong or markedly disagreeable odor, as this is objectionable to users of automobiles.

6. The gasoline should be free from noncombustible material such as water and sediment.

These stated requirements are simple in principle and are almost axiomatic. The chief problem is to fix limits, defined by actual tests, that will satisfy the desirable conditions.

#### TYPES OF GASOLINE MARKETING AND THEIR GENERAL PROPERTIES.

There are at present on the market types of gasoline produced by several general methods. These may be classified as follows:

1. "Straight refinery" gasoline.
2. Blended "casing-head" gasoline.
3. "Cracked" and blended gasolines.



*"Straight" Refinery Gasoline.*

"Straight" refinery gasolines are produced by methods that vary somewhat in different parts of the country, but in general are similar. Crude oil is distilled in a fire still until the gravity of the condensed product reaches some predetermined mark. The distillate, so-called crude naphtha or benzine, is acid refined, neutralized, washed and steam distilled. Several products of different ranges of volatility may be produced from the crude naphtha, or the steam distillation  
8 may separate the gasoline from the less volatile "bottoms" that go into the kerosene or burning-oil stock.

Straight refinery gasolines are generally characterized by a low content of "unsaturated"<sup>a</sup> and aromatic hydrocarbons and by a distillation curve of characteristic form, free from marked irregularities. The distillation curve of a typical straight refinery motor gasoline appears later in this paper on Form 2 (see page 29), the sheet used by the bureau for keeping graphic records of distillation analyses of gasoline.

*Blended Casing-head Gasoline.*

During the past few years so-called casing-head gasoline, obtained from natural gas by compression or absorption processes, has come on the market. "Straight" casing-head gasoline, especially that produced by the compression process, is usually too volatile for general use and, before being marketed, is blended with enough heavy naphtha to produce a mixture that can be used safely as motor fuel. In general, blended casing-head gasoline is characterized by a volatility range that shows a considerable percentage of constituents of relatively low boiling point, and a high "end point." The characteristic curve of a blended casing-head gasoline appears on Form 2, to which reference has already been made. Frequently, however, the blending is done in a manner difficult to detect; the natural gas gasoline is used in moderately small proportion with "heavy" straight refinery naphtha in order to make a product with a desirable percentage of volatile constituents.

As regards chemical properties, blended casing-head gasoline seems to be identical with straight refinery products of the same distillation range, provided the comparison is limited to derivatives of the same or similar producing fields.

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(a) The term unsaturated is generally understood to include olefins and poly-olefins. The general chemical formula for the olefin series of hydrocarbons is  $C_nH_{2n}$ . Aromatic hydrocarbons occurring in gasoline generally fall in the benzene series, having the general chemical formula  $C_nH_{2n-6}$ .

Characteristic physical properties of these gasolines are due wholly to the details of blending.

*Cracked or Synthetic Gasoline.*

"Cracked" or synthetic gasoline is an important factor in the present market supply of motor fuel and is being produced in large quantities. It is generally sold in the form of blends with varying proportions of straight refinery and casing-head gasoline.

Cracked gasolines are similar to straight refinery products in some physical and chemical properties, but differ in the matter of containing varying proportions of unsaturated hydrocarbons.<sup>a</sup> The utility of these constituents has not yet been completely determined. It appears that they have balanced advantages and disadvantages, and it is not as yet safe to predict the degree of satisfaction with which cracked products of relatively high "degree of unsaturation"<sup>b</sup> can be used in general service. Thus far, however, these products have been marketed in the form of blends that are perfectly satisfactory and are generally used without knowledge that they contain cracked gasoline.

PROPERTIES OF GASOLINE AND METHODS OF TESTING.

Before a system of analysis and specifications is outlined it seems desirable to discuss the individual properties that might be considered important and to describe analytical methods. This paper is not intended as a complete review of gasoline analysis, and those properties that are considered of minor practical importance are not discussed in detail.

*Color.*

Color is of some importance because it serves as an index of other qualities. Properly refined gasolines are "water white," and hence it is often desirable to include a color requirement in specifications for gasoline. It does not, however, seem necessary to employ a test involving any sort of a tintometer, as the rough-and-ready method of looking through the

(a) Aromatic hydrocarbons also occur in smaller degree in cracked gasoline, but for reasons involving economy in production the yield of these hydrocarbons is generally minimized.

(b) Highly unsaturated cracked gasoline shows a loss through treatment with an excess of cold concentrated sulphuric acid which in some cases runs as high as 40 per cent. The blends usually marketed are, however, less than 8 per cent "unsaturated."

bottom of a 4-ounce sample bottle<sup>a</sup> or 100 c. c. graduate is adequate.

#### *Odor.*

Gasoline should be free from a rank or disagreeable odor, as such odor causes discomfort to users, especially if it has a tendency to cling to clothing. Of course, one can not fix a definite standard of quality and strength for odor. The older requirements demanded the sweet, pleasant odor characteristic of "high-test" uncracked distillates. With the present necessity of using cracked gasoline this requirement has become impossible and the requirement of odor must be omitted or left rather indefinite.

#### 10 *Water, Sediment, and Other Foreign Matter.*

Gasoline should obviously be free from water and other foreign matter. Water is seldom present in gasoline and is always easy to detect, as the two liquids are mutually insoluble. Sediment is equally easy to detect on account of the transparency of gasoline.

#### *Acidity.*

Obviously gasoline should not contain any of the acid used during the refining process. Market products rarely fail to meet this requirement, which is so important that a test should always be made. A simple and effective method of detecting acidity is to shake the residue in the Engler flask, after an analytical distillation, with a little distilled water, and then to test this water extract with a suitable indicator, such as litmus, methyl orange, or phenolphthalein. Shaking the original sample with water does not serve to detect acid that is chemically combined with the gasoline, and this test, although recommended in Technical Paper 166, seems to be practically useless.

#### *Calorific or Heating Value.*

The value of motor fuel is a function of its heating value or B. t. u. value. The differences in heating value among varieties of gasoline are relatively small, and this property is, therefore, not important enough to merit determination in the routine testing of gasoline. Some recent experiments of

---

(a) The oil industry commonly employs a cylindrical 4-ounce bottle of the following approximate outside dimensions: Height of body 5½ inches, diameter of body 1½ inches, height of neck ¾ inch, diameter of neck ¾ inch.

the Bureau of Mines<sup>a</sup> indicated that a straight refinery gasoline, with a gravity of 74° B., was about 1.3 per cent higher in heating value than a cracked gasoline, with a gravity of 58° B., on the basis of weight and about 7 per cent lower on the basis of volume. Seemingly the heavier and less volatile gasolines are actually superior to the high-test light products as regards potential power production per gallon. This assumption, of course, implies equal efficiency in utilization.

*Content of Aromatic Hydrocarbons--Benzene, Toluene, and Others.*

The desirability of aromatic hydrocarbons as motor fuel is a question that is already receiving attention. The commercial production of sufficient toluene to meet the needs of the explosives industry has yielded an excess of the benzene and solvent naphtha fractions of light oil and new methods of utilizing these products are being sought. The total available quantity of these aromatic hydrocarbons is small in relation to the country's production of gasoline, but it is important, especially in localities where coal is coked in by-product ovens.

The utility of aromatic hydrocarbons as motor fuel has already been studied to some extent. On the basis of present evidence, these products, although chemically different from petroleum hydrocarbons, appear to have properties that give certain advantages in utilization. This problem merits discussion beyond the scope of the present paper; however, the evidence at hand indicates that if aromatic hydrocarbons appear in the American market as motor fuel in the future, users will be benefited.

The percentage of aromatic hydrocarbons permissible in gasoline for use in the average automobile motor may be necessarily limited to some maximum that has been proven desirable by experience. The relatively high freezing point of pure benzene (5.5° C. or 42° F.) is one factor that may necessitate such a limitation, which can probably be effected most simply by a gravity requirement. Aromatic hydrocarbons—benzene, toluene, and the others—have specific gravities of about 0.87 to 0.88 (29° to 30° B.) and distill at the same temperatures as petroleum hydrocarbons having specific grav-

(a) Rittman, W. F., Jacobs, W. A., and Dean, E. W., Physical and chemical properties of gasolines sold throughout the United States during the calendar year 1915: Tech. Paper 163, Bureau of Mines, 1916, 45 pp. Refer to Table 7, p. 18.

ities between 0.70 and 0.76 (54° to 70° B.). Therefore, an approximate idea of the percentage of aromatics in a mixture can be obtained through the relation between figures for distillation range and specific gravity.

### *Unsaturated Hydrocarbons.*

Another matter that has not been worked out completely is the effect of unsaturated hydrocarbons on the properties of gasoline. As already stated, there is conclusive evidence showing that gasolines containing moderate percentages of unsaturated hydrocarbons can be used with entire satisfaction, but it has not yet been definitely established that the presence of unlimited proportions of these constituents causes no disadvantage.

In view of the present market conditions it does not seem desirable to emphasize any requirements that may interfere with the development of cracking processes, as this now seems to offer the greatest possibility of conserving the country's petroleum resources.

The bureau has recently published as Technical Paper 181<sup>a</sup> the results of a study of the comparative advantages of various analytical methods employed for determining "degree of unsaturation." This study has shown that the acid-heat test largely used by refiners is little better than qualitative and that determinations of iodine absorption by the Hanus method, though accurate and fairly rapid, requires a fair degree of manipulative skill on the part of the operator. The

measurement of the percentage absorbed by concentrated 12 sulphuric acid seems on the whole the most practical

method of ascertaining the degree of unsaturation of a gasoline, provided the details of this test are properly conducted. It must, however, be understood that this percentage value is not the actual olefin content of the gasoline.<sup>b</sup>

### *Specific Gravity.*

Specific gravity is in itself of very slight significance in determining the properties of gasoline, except as noted in the discussion of mixtures containing aromatic hydrocarbons. Gravity may serve as an index of other properties, particular-

(a) Dean, E. W., and Hill, H. H., Determination of unsaturated hydrocarbons in gasoline: Tech. Paper 181. Bureau of Mines, 1917, 25 pp.

(b) Brooks, B. T., and Humphrey, Irwin, The action of concentrated sulphuric acid on olefins, with particular reference to the refining of petroleum distillates: Jour. Am. Chem. Soc., vol. 40, May, 1918, pp. 822-856.

ly volatility, if knowledge is at hand regarding the source and method of production of a sample of gasoline.

Gasolines of equivalent volatility from the Pennsylvania and California fields may have gravities differing as much as 8° Baume'. Figures indicating this fact appear in Technical Paper 163<sup>a</sup> of the Bureau of Mines. In addition gravity measurements do not differentiate straight refinery and blended casing-head gasolines, which may vary widely in actual composition.

The determination of gravity has been, and probably always will be one of the most useful tests that the refiner employs, but it is of little value to the analyst who does not possess enough additional information to make proper interpretation of gravity results.

Methods of determining gravity are too well known to need discussion. The type of instrument chosen may be a hydrometer, a displacement balance (such as the Westphal), or a suitable pycnometer. Of these instruments the hydrometer is perhaps most convenient, the pycnometer least convenient. The accuracy in determination should be within 0.1 to 0.2 per cent. The oil industry expresses gravity as the ratio of the densities of oil and water at the temperature of 60° F.

In some laboratories the accepted practice is to use the temperature of 15° C. (59° F.) instead of 60° F. The discrepancy thus introduced is, however, generally less than the experimental error in measurement.

#### *Volatility.*

Volatility is the basic property that determines the grade and usefulness of gasoline. Unfortunately, it is a complex property, the grade and usefulness of which can not be stated in a few words, as different ranges of volatility are desirable for different conditions of use and these are subject to wide variation. Thus it may be noted that the same type of 13 gasoline is not equally desirable for airplane and truck motors, and that the type of motor fuel that would be most suitable for use in the Canal Zone might not give good results in Alaska. Hence, it is easily seen that a discussion of the desirable properties of volatility must necessarily be confined to generalities. There are, however, certain simple basic principles that merit brief consideration.

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(a) Rittman, W. F., Jacobs, W. A., and Dean, E. W., Physical and chemical properties of gasolines sold throughout the United States during the calendar year 1915: Tech. Paper 163, Bureau of Mines, 1916, p. 32.



In the first place, it is desirable to use as cheap a gasoline as can be made to yield satisfactory results. The men who have to pay for maintaining cars in service need no argument in support of this statement, and it is equally sound from another and broader point of view. In the interest of conservation it is desirable to draw lightly upon natural resources that are limited and to use, whenever possible, materials that are abundant. The more volatile fractions that go to make up gasoline are less plentiful and more expensive than the heavier constituents that are on the border line between gasoline and kerosene or burning oil.

Gasoline should, therefore, contain a moderate but not excessive proportion of low-boiling constituents. There should be sufficient volatile material to permit ready starting of a cold motor, but not enough to make the gasoline subject to high evaporation losses and unnecessarily costly, or dangerous in handling. The limitation of quantity of low-boiling constituents is particularly important in airplane gasoline as it obviates certain irregularities in carburetion that may occur at high altitudes, and reduces somewhat the danger of fire in case of leakage or breaking of supply tanks.

Ordinary motor gasoline should have a total volatility range wide enough to include constituents of relatively high-boiling points. For economic reasons of importance both to the individual user and the country as a whole, this volatility range should be such that the gasoline contains the largest possible percentage of the original crude oil. However, the range should not be wide enough to exceed the limits of the vaporizing power of the engine. These limits obviously vary with types of motor design and conditions of use. Thus it would be expensive folly to specify the same grade of gasoline for a motor truck that is required for delicately adjusted airplane engines designed to run most efficiently at altitudes ranging from 10,000 to 20,000 feet.

The general method of determining volatility is to subject gasoline to an analytical distillation. The results obtained are a function of the apparatus and method used as well as of the gasoline itself, and the method used should always be specified as well as the results. Distillation figures resemble flash-point figures in that in themselves they mean little. In

either case the method and apparatus used should be  
14 stated. For example, it should be said a gasoline has a certain distillation range with the A. S. T. M. method,



just as it is customary to say that an oil has a given flash point in the Pensky-Martens closed-cup tester.

### *Distillation Methods.*

Numerous distillation methods are in use in the petroleum industry, many of them undesirable and a small number of them based on sound practical requirements. No one distillation method is good for all purposes and in issuing this report the bureau has been forced to select one of several methods having strong claims for superiority. The most general need seems to be for a distillation method that will serve to differentiate gasolines reliably and that does not require too elaborate apparatus or too tedious manipulation. The American Society for Testing Materials has had occasion to adopt for the analysis of turpentine substitutes a method that seems to strike the right combination of simplicity and efficiency and is based on sound theoretical principles. To adapt this method to gasoline testing a few minor changes were necessary, the the most important being the substitution of a thermometer better adapted to gasoline distillation than the 400° C. instrument specified by the society, and the reading of temperatures as given amounts distill instead of reading the percentages distilling between given temperature limits.

### REVIEW OF THE GASOLINE SITUATION.

Before a system of actual specifications is discussed, it seems desirable to summarize the status of the gasoline market in January, 1919. During the last year or two the total production of refinable crude oil has not increased notably, although the demand for gasoline has continued to grow. The supply of gasoline has kept pace with the demand chiefly because of the use as motor fuel of a greater proportion of the crude oil refined. Cracking processes have helped to increase the supply, as also the recovery of gasoline from natural gas. In addition, many refiners have augmented their production by what is called "cutting deeper into the crude." Some of the fractions of petroleum that were formerly marketed under other names and for other purposes are now sold as gasoline, thus in effect increasing gasoline production. This practice has occasioned some discontent among users of cars, and statements are frequently made that motor gasoline now marketed has deteriorated in quality or has been adulterated. The Bureau of Mines has never detected an actual case of adultera-

tion among several hundred samples of gasoline collected in the open market, and is of the opinion that the change in quality is not necessarily a deterioration. In any event  
 15 users are getting better value for their money than they would if the older types of "high-test" gasolines were commonly supplied in the market.<sup>a</sup>

Gasoline producing and refining practice, which has been in a stage of transition during the last three or four years, is even now unsettled and information regarding the general situation is not in the possession of the bureau. During the calendar year 1917, when a survey of the country was made, gasoline marketed on the West Coast was more volatile than in the East, which in turn was more volatile than the type generally supplied in the Middle States. Some recent information indicates that this general condition still exists, but that there is a tendency toward the general adoption of Mid-Continent standards.

#### GENERAL CONSIDERATIONS IN PREPARING GASOLINE SPECIFICATIONS.

Through different sources the Bureau of Mines has been asked to assist in preparing gasoline specifications. The primary need was for Federal purchases in the District of Columbia. Later there were received requests for advice from State and municipal authorities who were contemplating the adoption of legal standards for regulating the quality of gasoline. Finally, the bureau had been required to aid in formulating specifications for various grades of gasoline required for military purposes.

In every instance the study of the following two important problems was necessary: (1) what particular type or types of gasoline were needed, and (2) how nearly the requirements could be satisfied in the market. As regards some gasoline, particularly that needed by the aviation service, the specification of grades that involve special refinery procedure was necessary. Generally, however, suitable grades were found in the market.

##### *Limits and Requirements of Gasoline Specifications.*

An ideal system of specifications would, by a minimum of simple requirements, eliminate all unsatisfactory products

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(a) For a detailed discussion of this subject see Dean, E. W.: Fuel for automotive apparatus, Jour. Soc. Automotive Eng., vol. 2, January, 1918, pp. 47 to 53.

without discriminating against any that are desirable. This ideal is impossible to attain for gasoline, partly because no hard and fast line differentiates good gasoline from bad, and partly because a satisfactorily simple specification can not cover all possible sources of discrepancy. In general, however, the tests discussed later furnish an adequate index of quality for the normal products marketed as gasoline, and will probably be satisfactory until such time as new and unforeseen developments occur in the refining industry.

The requirements that are considered adequate for regulating the quality of gasoline sold for domestic use are color, freedom from corrosive agents, and volatility. Color is in itself of minor importance but generally, though not infallibly, indicates whether a gasoline is properly refined. At present refiners show little tendency to market gasolines that do not meet this requirement. The requirement of freedom from corrosive agents is important, and the simple test or tests for this property should be made even though the almost universal care taken by refiners has made it unnecessary.

In deciding upon a system of volatility limits two general factors must be considered. It is obvious that the points taken in the volatility range must be so selected as to define it. A specification that fixed only the initial boiling temperature and the 20 per cent mark would be practically useless; likewise a specification fixing only the upper distillation limit would be totally inadequate in determining the actual volatility range of gasoline. Therefore the volatility limits should include points both at the low and high ends of the distillation range. In addition limitation of some point in the middle of the curve is desirable as there are moderate possibilities of variation even if the ends of the curve are defined.

The second general consideration is that limits should be selected that permit easy and reliable measurement in the laboratory. The common practice in the industry has been to lay emphasis on so-called "initial" and "final" boiling temperatures. These points, particularly the former, are exceedingly difficult to determine with precision. Countless disputes and disagreements have occurred because of attempts to specify volatility in terms of these two troublesome points. Experience has shown that the various percentage marks between the limits of 10 and 90 per cent are easy to determine reliably, and that even as low a mark as the 5 per cent point is notably more reliable than the initial boiling point. In its own laboratories the Bureau of Mines has had little trouble in getting

check results in "dry-point" (one definition of final boiling temperature) determinations, but has been informed of numerous discrepancies among the results of different analytical laboratories. The bureau believes that specifications may require the measurement of final boiling temperature but that this limit should allow a sufficiently wide margin so that discrepancies in laboratory determinations will not discriminate against any properly refined gasolines that have a satisfactory 90 per cent mark.

The bureau recommends fixing the more volatile (low boiling) end of the distillation range by placing an upper and a lower limit on some selected temperature mark between the limits of 5 per cent and 20 per cent. The upper limit is necessary to insure the presence in the gasoline of enough low-boiling constituents to permit ready starting of a cold motor. The lower limit is to prevent the marketing of gasolines that are unnecessarily dangerous and subject to high evaporation losses. As regards facility of examination in the laboratory, the 20 per cent limit is most desirable, but if close regulation of quality is desired, as for aviation gasoline, it may be advisable to take a mark as low as the 5 per cent point.

#### PROPOSED SPECIFICATIONS FOR GASOLINE.

As already stated, the bureau believes that no one set of specifications is satisfactory for all needs. The following system is suggested, however, as a simple and satisfactory scheme for regulating the quality of ordinary automobile gasoline:

##### COLOR.

Requirements.—Water white.

Method of determination.—Inspection of the vertical column in a 4-ounce sample bottle or 100 c. c. graduate.

##### *Discussion.*

This simple test furnishes a fair but not infallible indication as to the care with which gasoline is refined.

##### ACIDITY.

Requirement.—Total absence of free or combined acid.

Method of determination.—The residue in the flask after completion of an analytical distillation shall be shaken thoroughly with 1 c. c. of distilled water. The water extract shall

be neutral in reaction. This may be determined by the use of any satisfactory indicator. Freedom from acidity is indicated by failure to color blue litmus paper pink, by failure to develop a reddish color when a few drops of methyl orange solution is added, or by the development of a red color on addition of a few drops of phenolphthalein solution and one drop of hundredth normal sodium hydroxide solution.

#### *Discussion.*

The experience of the Bureau of Mines indicates that an acid reaction is rarely or never discovered when the original gasoline is shaken with distilled water and the aqueous extract tested with a suitable indicator. Information<sup>a</sup> has been received that carelessly refined gasoline sometimes contains 18 acid compounds that decompose in the course of the distillation and leave free acid in the residue in the flask. This has led to recommendation of the test described above rather than the test given in Technical Paper 166.

#### VOLATILITY.

Requirements.—The gasoline shall, when distilled by the method described hereafter, meet the following requirements:

(a) The temperature read on the thermometer when 20 per cent has distilled shall not be below 70° C. (158° F.), nor above whatever limit is fixed after due consideration of conditions of use.

(b) The temperature read when 90 per cent has distilled shall not be above another limit similarly chosen.

(c) The temperature read when 50 per cent has distilled shall not be higher than a mark halfway between the upper 20 per cent limit and the 90 per cent limit.

(d) The dry point shall not exceed the 90 per cent limit by more than 40° C. (72° F.).

#### *Discussion of Temperature Limits.*

Several of the marks specified need not necessarily be fixed exactly as indicated above. The Bureau of Mines considers the 20 per cent point the most satisfactory low limit but recognizes that there is no great advantage over any other

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(a) Chemists of the Atlantic Refining Co. have advised the bureau that an acid reaction is sometimes discovered in the distillation residue when the original product appears to be neutral.

point between 5 per cent and 20 per cent. The 50 per cent point is recommended simply because no other intermediate point seems preferable. The 90 per cent point has been proven by experience to be the highest mark that is not likely to vary with slight discrepancies in experimental operation. "Dry point" is one of several possible definitions of final boiling temperature. The experience of the bureau has been that this point offers the greatest possibility of experimental agreement of the various marks used for final boiling temperature, but that it is difficult to formulate a definition that renders misunderstanding impossible. The bureau does not *not* approve of the definition that involves reading the temperature as the bottom of the flask goes dry or when a puff of white vapor is observed. Any percentage point between the limits of 96 to 98 per cent, however, may be used as a final mark, but care must be taken not to label it a "dry point."

#### DISTILLATION METHOD AND APPARATUS.

The distillation method recommended by the bureau is approximately that adopted by Subcommittee XI of Committee D1 of the American Society for Testing Materials.<sup>a</sup>

The two noticeable points of variation are the method of reading temperatures against fixed percentage points and the use of a thermometer of lower range. The method of the society is proposed for the analysis of turpentine substitutes which are petroleum products of higher boiling range than gasoline.

The apparatus used should be as follows. The particular form employed by the bureau is represented in figure 1 and differs somewhat in appearance, though not in the essential details, from that generally supplied in the market for this test.

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(a) American Society for Testing Materials, Year Book for 1915, pp. 568-569; or pt. 1, Committee Reports, 1916, vol. 16, pp. 518-521.

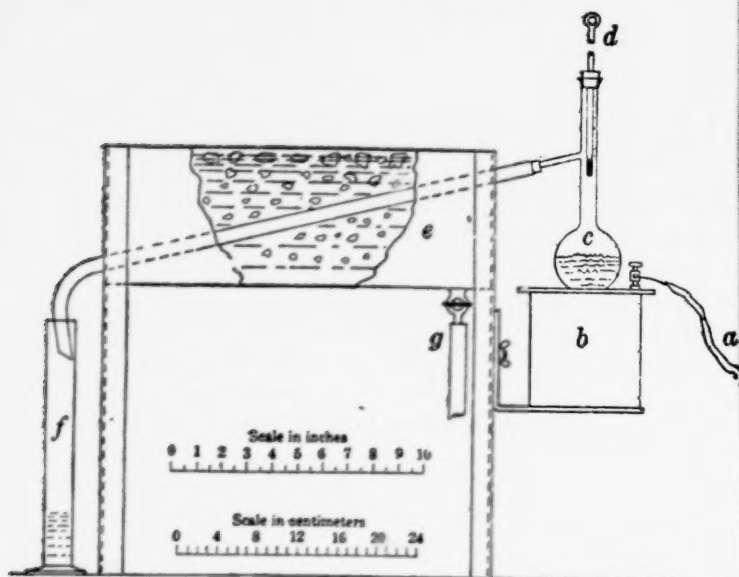


FIGURE 1.—Apparatus used by the Bureau of Mines for distillation test of gasoline. (a) Wires connecting with electric mains through a suitable rheostat. (b) Electric heater. (c) Engler distillation flask filled with charge of gasoline partly distilled. (d) Thermometer. (e) Condenser, with trough filled with ice and water. (f) Receiving graduate. (g) Cock for draining condenser trough.

### Flask.

The flask used shall be the standard 100 c. c. Engler flask, described in the various textbooks on petroleum. Dimensions (outside) are as follows:

#### Dimensions of flask.

Dimensions.	Cm.	Inches.
Diameter of bulb.....	6.5	2.56
Diameter of neck.....	1.6	0.63
Length of neck.....	15.0	5.91
Length of vapor tube.....	10.0	3.94
Diameter of vapor tube.....	0.6	0.24

- 20 Position of vapor tube, 9 cm. (3.55 inches) above the surface of the gasoline when the flask contains its charge of 100 c. c. The tube is approximately in the middle of the neck.

The flask shall be supported on a ring of asbestos having a circular opening  $1\frac{1}{4}$  inches in diameter; this means that



only this limited portion of the flask is to be heated. The use of wire gauze or a sand bath is not approved.

*Condenser.*

The condenser shall consist of a thin walled tube of metal (brass or copper) approximately one-half inch internal diameter and 22 inches long. It shall be set at an angle of  $75^{\circ}$  from the perpendicular and shall be surrounded with a cooling jacket of the trough type. The lower end of the condenser shall be cut off at an acute angle and shall be curved down for a length of 3 inches. The condenser jacket shall be 15 inches long.

*Thermometer.*

The accuracy of distillation depends primarily on the accuracy of the thermometer and on this account the instrument should be defined so that the results of different analysts may check. The thermometer described in the report of the American Society for Testing Materials is not adapted for use with gasoline. Its range is unnecessarily high and the lower temperatures are difficult to read, because of interference of the cork in the neck of the distillation flask.

The present discussion does not deal with the details of temperature measurement, but simply indicates requirements that should be met and that will insure the maximum variations in thermometer readings at different analytical laboratories not to exceed  $1^{\circ}$  to  $2^{\circ}$  C.

Briefly, the thermometer should be an accurate nitrogen-filled instrument with a short blub (length 10 to 15 mm., 0.39 to 0.59 inch) and with the mark for  $35^{\circ}$  C. ( $95^{\circ}$  F.) at a distance between 100 and 120 mm. (3.94 to 4.75 inches) from the top of the bulb. The thermometer should be scaled for total immersion.

The above requirements almost always permit the lowest temperature registered to be read above the cork of the distillation flask, and variations due to the so-called stem correction will always be practically the same. The stem correction should not be applied, but it should be understood that results of distillations are expressed in terms of thermometer readings and not in terms of actual temperatures. The use of partial-immersion thermometers is not recommended for distillations, as these instruments are no more likely to agree with one another than are the more common total-immersion thermometers.

The following specification for a gasoline distillation thermometer is offered so that the prospective purchaser may be able to state definitely what he requires and by so doing obtain a satisfactory instrument. The specification has been submitted to several manufacturers of thermometers, who state that it insures the obtaining of a satisfactory high-grade instrument without imposing on the maker unnecessary and troublesome restrictions that increase the cost.

*Specifications for Gasoline Distillation Thermometer.*

The thermometer should be made of selected enamel-backed tubing having a diameter between 5.5 and 7 mm. The bulb should be of Jena normal or Corning normal glass; its diameter should be less than that of the stem and its length between 10 and 15 mm. The total length of the thermometer should be approximately 380 mm. The range should cover 0° C. to 270° C., with the length of the graduated portion between the limits of 210 to 250 mm. The point marking a temperature of 35° C. should be not less than 100 mm. nor more than 120 mm. from the top of the bulb.<sup>a</sup>

The scale should be graduated for total immersion. The accuracy must be within about 0.5° C. The space above the meniscus must be filled with an inert gas, such as nitrogen, and the stem and bulb must be thoroughly aged and annealed before being graduated.

All material and workmanship must be of the best. The scale shall be marked for single-degree intervals. Each tenth degree shall be numbered and each fifth degree distinguished by a longer mark.

*Source of Heat in Gasoline Distillation.*

The source of heat in distilling gasoline may be a gas burner, an alcohol lamp, or an electric heater. The commonly used Tirrell type of gas burner is moderately satisfactory, but a burner having a smaller orifice and more sensitive regulating valve is more desirable. Such a burner has been developed and is used by the Philadelphia laboratory of the Atlantic Refining Co., and is described and shown in diagram in a recent journal article<sup>b</sup> published by permission of the bureau.

(a) If desired, a Fahrenheit thermometer may be obtained on these specifications by substituting Fahrenheit equivalents for the several centigrade marks.

(b) Dean, E. W., A convenient electric heater for use in the analytical distillation of gasoline: Jour. Ind. and Eng. Chem., vol. 10 (October, 1918), pp. 823-826.

Alcohol lamps may be employed in laboratories lacking a satisfactory gas supply. A type that has been tried by the bureau and found satisfactory is sold by the C. J. Tagliabue Mfg. Co., Brooklyn, N. Y. For the bulk of its own work the bureau has used specially designed and constructed electric heaters which have proved considerably more satisfactory than either gas or alcohol burners. This type of electric heater is described 22 in the journal article referred to in connection with the Atlantic Refining Co. gas burner.

Electric heaters are superior to the other types in that they permit more exact regulation of the degree of heat, are not subject to serious uncontrollable fluctuation (such as is caused by air currents) and involve a minimum danger of fire.

#### PROCEDURE AND DETAILS OF MANIPULATION IN CONDUCTING DISTILLATIONS.

1. If an electric heater is used it is started first to warm it.

2. The condenser box is filled with water containing a liberal proportion of cracked ice.

3. The charge of gasoline is measured into the Engler flask from a 100 c. c. graduate. This graduate is used as a receiver for distillates without any drying. This procedure eliminates errors due to incorrect sealing of graduates and also avoids the creation of an apparent distillation loss due to the impossibility of draining the gasoline entirely from the graduate.

4. The above-mentioned graduate is placed under the lower end of the condenser tube so that the latter extends downward below the top of the graduate at least 1 inch. The condenser tube should be so shaped and bent that the tip can touch the wall of the graduate on the side adjacent to the condenser box. This detail permits distillates to run down the side of the graduate and avoids disturbance of the meniscus caused by the falling of drops. The graduate is moved occasionally to permit the operator to ascertain that the speed of distillation is right, as indicated by the rate at which drops fall. The proper rate is from 4 c. c. to 5 c. c. per minute, which is approximately two drops a second. The top of the graduate is covered, preferably by several thicknesses of filter paper, the condenser tube passing through a snugly fitting opening. This minimizes evaporation losses due to circulation of air

through the graduate and also excludes any water that may drip down the outside of the condenser tube on account of condensation on the ice-cooled condenser box.

5. A boiling stone (a bit of unglazed porcelain or other porous material) is dropped into the gasoline in the Engler flask. The thermometer, equipped with a well-fitted cork and with its bulb covered with a thin film of absorbent cotton (preferably the long-fibered variety sold for surgical dressings), is fitted into the flask with the thermometer bulb just below the lower level of the side neck opening. The flask is connected with the condenser tube.

6. Heat is applied cautiously and the gasoline brought to its boiling point. In case it is desired to record the initial boiling point the thermometer is read when the first drop  
23 falls from the end of the condenser tube into the graduate.

The amount of heat is then increased so that the distillation proceeds at a rate of from 4 c. c. to 5 c. c. per minute. The thermometer is read as each of the selected percentage marks is reached. In case maximum boiling point or dry point (one definition of end point) is to be measured, the heating is continued after the flask bottom has boiled dry until the column of mercury reaches a maximum and then starts to recede consistently.

7. Distillation loss is determined as follows: The condenser tube is allowed to drain for at least five minutes after heat is shut off, and a final reading taken of the quantity of distillate collected in the receiving graduate. The distillation flask is removed from the condenser and thoroughly cooled as soon as it can be handled. This can be accomplished by using first an air bath and then immersing the bulb of the flask in the ice-water mixture in the condenser trough. The condensed residue is poured into a small graduate or graduated test tube and its volume measured. This residue is of course retained for the acidity test which has been described in an earlier connection. The sum of its volume and the volume collected in the receiving graduate, subtracted from 100 c. c. gives the figure for distillation loss. In case this loss exceeds 2 per cent, a check distillation should be run to ascertain whether such loss is due to the presence of highly volatile constituents or to failure to condense the lighter fractions on account of too strong heating at the beginning of the distillation.

*Discussion of Details of Procedure.*

Some of the prescribed details of procedure merit discussion. The use of a boiling stone is desirable to prevent "bumping," which occasionally occurs, especially when the Engler flask is new or freshly cleaned.<sup>a</sup> The film of cotton on the thermometer bulb retains a layer of condensed gasoline and insures against superheating, either in the course of the distillation or at the end point. Superheating manifests itself as an irregular fluctuation of the thermometer during distillation, or as an abnormal rise at the end. The film of cotton should be very thin and in case of doubt the quantity used (5 to 10 milligrams) should be weighed. If the material used is the long-fibered cotton sold for surgical purposes, the film rarely needs renewing as, if properly applied, it adheres tenaciously to the thermometer bulb.

Avoidance of an excessive distillation loss is important, as otherwise the temperature readings will be abnormally high. If blends containing considerable proportions of casing-head gasoline are distilled, it may be necessary to use an ice-salt freezing mixture in the condenser trough and to keep the receiving graduate immersed in a mixture of ice and water (preferably not the ice-salt freezing mixture). If this is done the gasoline must be cooled in ice and water before measuring it into the flask, or else a suitable allowance (approximately 3 per cent) must be made for the contraction of the gasoline due to cooling it from room temperature to the freezing point of water.

**ADDITIONAL ANALYTICAL METHODS EMPLOYED  
IN THE TESTING OF GASOLINE.**

In addition to the tests described in connection with the suggested system of specifications there are various analytical methods employed, sometimes for more elaborate types of specifications and sometimes for the purpose of obtaining information of a general nature. Some of the more important of these tests are listed and described as follows:

*The "Doctor" Test.*

The "Doctor" test is largely employed by refineries for detecting the presence of certain types of decomposable sul-

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(a) Engler flasks should be occasionally cleaned to remove deposits of carbon. This can be easily accomplished by filling the bulb with chromic-sulphuric acid cleaning mixture and allowing to stand over night.

phur compounds. It does not determine the actual presence or absence of sulphur in gasoline, and, in fact, products that have been refined to pass this test are likely to contain a larger percentage of sulphur than before treatment. But gasoline not passing the doctor test is likely to decompose in storage with the development of a yellow color and an offensive odor. In addition, there is a possibility that gasoline "sour" to the doctor test may have been the cause of certain reported corrosion of metal parts of carburetors.

The doctor test shall be conducted and interpreted as follows:<sup>a</sup>

Obtain pure flowers of sulphur and prepare the sodium plumbite or doctor solution. For the latter, dissolve approximately 125 grams of sodium hydroxide (NaOH) in a liter of distilled water, add 60 to 70 grams of litharge (PbO) and shake vigorously for 15 to 30 minutes, or let it stand with occasional shaking for a day. Allow it to settle and pour or siphon off the clear liquid. If the solution fails to settle properly it may be filtered through a mat of asbestos. The solution must be kept in a bottle closed tightly with a cork stopper.

In making the test shake together vigorously two volumes of gasoline and one volume of the doctor solution (10 c. c. and 5 c. c. are convenient quantities) in a test tube; or, if preferred, an oil sample bottle may be used with correspondingly larger quantities. After shaking together for about 15 seconds, add a small pinch of flowers of sulphur, shake the tube again for 15 seconds and allow the contents to settle. The quantity of sulphur used shall be such that practically all of it floats on the surface separating the gasoline from the doctor solution.

If the gasoline is discolored, or if the sulphur film is so dark that its yellow color is noticeably marked, the test shall be reported as positive and the gasoline condemned as "sour." If the liquid remains unchanged in color and if the sulphur film is bright yellow or only slightly discolored with gray or flecked with black, the test shall be reported negative and the gasoline considered "sweet."

#### *Corrosion and Gummying Test.*

A test involving evaporation of gasoline in a polished copper dish was advised by F. C. Robinson and his associates of the Atlantic Refining Co. for determining the purity of air-

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(a) The bureau was aided in formulating a description of this test by C. J. Robinson, chemist of the Standard Oil Co. of New Jersey.



plane gasoline. The Bureau of Mines as yet lacks information on the desirability of applying this test generally to motor fuel, but is including a description of it for general information. The test seems to be a severe one, and failure to pass it may not mean that a gasoline is not satisfactory for ordinary uses.

A charge of gasoline is evaporated to dryness on a steam bath in a freshly polished hemispherical copper dish about 3½ inches in diameter. The dish is filled to within about three-fourths of an inch of the top, or a charge of 100 c. c. is measured in from a pipette.

The bottom of the dish must not be colored gray or black, as will be the case if elementary sulphur is contained in the gasoline. The presence of a peacock-colored deposit does not indicate sufficient sulphur to condemn the gasoline.

It is specified that a weighable residue shall not remain in the dish. Some preliminary experiments made by the bureau have indicated that the maximum allowable residue should be 0.03 per cent of the charge of gasoline evaporated.

#### *Unsaturation Test.*

Certain types of gasoline, particularly those derived from cracking processes, contain olefin and similar hydrocarbons. A simple test for determining the relative proportion of these constituents is furnished by the sulphuric acid absorption method. The bureau recommends the following procedure:<sup>a</sup>

The container recommended is that described in the catalogues of chemical supply houses as a 6-inch, 9-gram, 50 per cent Babcock cream bottle. The neck of such a bottle is calibrated for the volume of 4.5 grams of butter fat which is approximately 5 c. c. An ordinary 5 c. c. pipette can be regraduated to deliver this quantity. The gasoline to be tested is measured into a clean, dry Babcock bottle, cooled by immersion for a minute or two in ice water, after which 200 per cent by volume of ordinary concentrated sulphuric acid is poured in from a small graduate. Care should be taken that the acid runs quietly down the side of the bottle, instead of splashing onto the surface of the gasoline. A rubber stopper is then placed in the bottle and the contents are shaken, first slowly, then vigorously with a rotary motion for several min-

(a) Dean, E. W., and Hill, H. H., Determination of unsaturated hydrocarbons in gasoline: Tech. Paper 181, Bureau of Mines, 1917, 25 pp.



utes. The gasoline and the acid are separated by either of the following methods:

*Gravity Separation.*

Sulphuric acid is added to the contents of the bottle until the surface of the liquid is about level with the upper graduation mark on the neck of the bottle. The mixture is then set aside and allowed to stand overnight, until practically complete separation is effected.

*Centrifugal Separation.*

The stoppered bottle is placed in a suitable centrifuge and revolved for two or three minutes at a speed of 500 to 1,000 r. p. m. Sufficient acid is added to bring the level up to the lower graduation mark, and the bottle and its contents are again centrifuged to complete the separation. More acid is added to bring the column to the upper graduation mark, after which the residual volume of gasoline is read.

## VAPOR PRESSURE.

In order to insure safety in the shipment of gasoline by tank car a vapor pressure test is required. The limit usually prescribed is 10 pounds per square inch.

The standard method prescribed by the Bureau of Explosives<sup>b</sup> is briefly as follows:

*Apparatus.*

The apparatus consists of the well-known inspectors' gas gage (made by the Pittsburgh Gage & Supply Co., Pittsburgh, Pa.) and a metal test cylinder of about 450 c. c. capacity (approximately 9 inches long and  $2\frac{1}{8}$  inches in diameter, outside dimensions) with an opening at the top for a standard one-fourth inch taper screw fitting. Accessories are thermometers, water bath of any convenient sort, temperature regulating media, and a small measure, the capacity of which is exactly one-tenth the capacity of the test cylinder.

*Procedure.*

The test cylinder is filled to exactly 90 per cent of its capacity. This can be accomplished conveniently by filling to the top and then pouring out enough to fill the small measure

(b) Report of the Chief Inspector of the Bureau of the Safe Transportation of Explosives and Other Dangerous Articles, Feb., 1916, pp. 27-30.

mentioned in the preceding paragraph. The gage is screwed in tightly and the test cylinder immersed in water at a temperature of 21° C. (70° F.) and shaken gently for a few minutes until the gasoline has come to the temperature of the bath (five minutes is considered sufficient). Then the gage is unscrewed and the pressure released for a period of 20 seconds. The cylinder is closed again by screwing the gage in, using if necessary something like liquid shellac to make the joint tight.

The test cylinder is placed in a water bath at 38° C. (100° F.)—32° C. (90° F.) from November 1 to March 1—with the water level just below the lower edge of the pressure gage. The water is stirred continually and the temperature maintained constant for 10 minutes. The gage is then tapped lightly and the pressure read.

This test is one with which the Bureau of Mines has had little experience. It seems to be open to objection on the ground that the pressure developed may be affected by the degree of agitation to which the gasoline is subjected. The bureau is not, however, in a position to suggest modifications or improvements.

#### FORMS FOR RECORDING THE RESULTS OF GASOLINE ANALYSES.

In keeping laboratory records of gasoline analysis the bureau has had occasion to employ two forms which have proved particularly convenient and which are reproduced in the present paper for purposes of information. The forms are designed for recording more information than is needed for specification analyses and are the types the bureau has selected for its own use. Form 1 is a blank record for tabulating results of the physical examination and analysis of the gasoline. On Form 2 are shown typical distillation curves for straight refinery and blended casing-head gasolines, to which reference has already been made.

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## GASOLINE ANALYSIS.

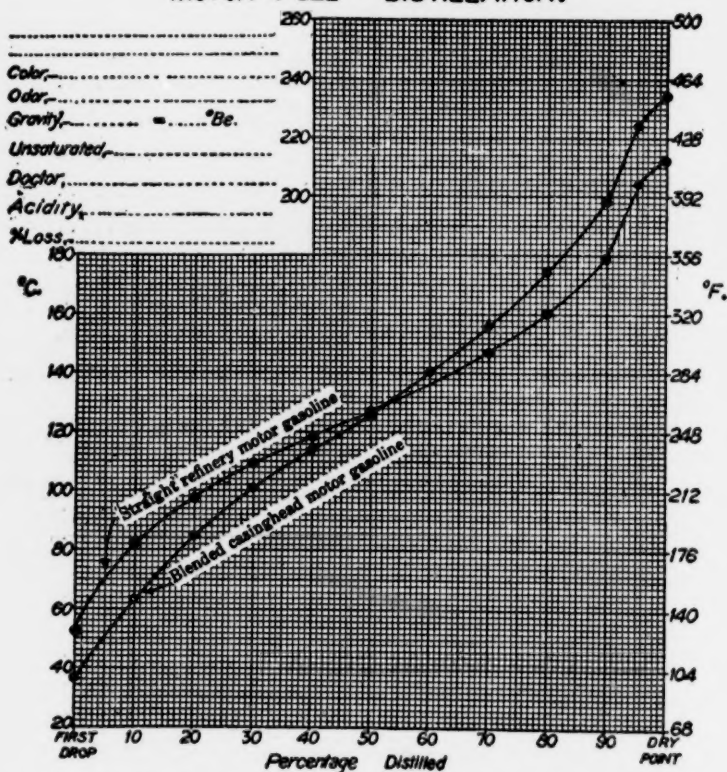
Sample No. ....

.....  
 .....  
 .....  
 Gravity.....Deg. B.....  
 Color..... Odor.....  
 Acidity..... Doctor test.....  
 Unsaturation.....per cent.  
 Distillation in 100-cc. Engler flask; barom.....mm.

<i>Mark.</i>	<i>Temperature.</i>	
	Deg. C.	Deg. F.
First drop	.....	.....
10 per cent	.....	.....
20 per cent	.....	.....
30 per cent	.....	.....
40 per cent	.....	.....
50 per cent	.....	.....
60 per cent	.....	.....
70 per cent	.....	.....
80 per cent	.....	.....
90 per cent	.....	.....
95 per cent	.....	.....
Dry point	.....	.....
Average	.....	.....
Distillation loss.....	per cent.	

FORM 1.—Form for recording results of gasoline analysis.

U.S. BUREAU OF MINES  
**MOTOR FUEL DISTILLATION.**



FORM 2 (fig. 2).—Graphic chart for recording results of gasoline analysis.

Form 1 is generally made up as a  $3\frac{3}{4}$  by  $6\frac{3}{4}$  inch sheet, punched for inclosure in a standard size loose-leaf binder or notebook. Form 2 is used as a  $6\frac{3}{4}$  by 7 inch sheet, which when folded once can be carried in the same book. Form 2 is generally printed on semi-transparent paper so that copies of analytical results can be made by the process of blue printing.

*Centigrade-Fahrenheit Temperature Transformation Table.*

On account of the common use of the two temperature scales, centigrade and Fahrenheit, some simple means of translating figures recorded in these two systems is desirable. Table 1 following has been employed by the bureau and found particularly convenient.

Table 1.—*Degrees centigrade to degrees Fahrenheit.*

	0	1	2	3	4	5	6	7	8	9
0	32	34	36	37	39	41	43	45	46	48
1	50	52	54	55	57	59	61	63	64	66
2	68	70	72	73	75	77	79	81	82	84
3	86	88	90	91	93	95	97	99	100	102
4	104	106	108	109	111	113	115	117	118	120
5	122	124	126	127	129	131	133	135	136	138
6	140	142	144	145	147	149	151	153	154	156
7	158	160	162	163	165	167	169	171	172	174
8	176	178	180	181	183	185	187	189	190	192
9	194	196	198	199	201	203	205	207	208	210
10	212	214	216	217	219	221	223	225	226	228
11	230	232	234	235	237	239	241	243	244	246
12	248	250	252	253	255	257	259	261	262	264
13	266	268	270	271	273	275	277	279	280	282
14	284	286	288	289	291	293	295	297	298	300
15	302	304	306	307	309	311	313	315	316	318
16	320	322	324	325	327	329	331	333	334	336
17	338	340	342	343	345	347	349	351	352	354
18	356	358	360	361	363	365	367	369	370	372
19	374	376	378	379	381	383	385	387	388	390
20	392	394	396	397	399	401	403	405	406	408
21	410	412	414	415	417	419	421	423	424	426
22	428	430	432	433	435	437	439	441	442	444
23	446	448	450	451	453	455	457	459	460	462
24	464	466	468	469	471	473	475	477	478	480
25	482	484	486	487	489	491	493	495	496	498
26	500	502	504	505	507	509	511	513	514	516
27	518	520	522	523	525	527	529	531	532	534
28	536	538	540	541	543	545	547	549	550	552
29	554	556	558	559	561	563	565	567	568	570
30	572	574	576	577	579	581	583	585	586	588
31	590	592	594	595	597	599	601	603	604	606
32	608	610	612	613	615	617	619	621	622	624
33	626	628	630	631	633	635	637	639	640	642
34	644	646	648	649	651	653	655	657	658	660

# 31 PUBLICATIONS OF PETROLEUM TECHNOLOGY.

A limited supply of the following publications of the Bureau of Mines has been printed and is available for free distribution until the edition is exhausted. Requests for all publications can not be granted, and to insure equitable distribution applicants are requested to limit their selection to publications that may be of especial interest to them. Requests for publications should be addressed to the Director Bureau of Mines.

The Bureau of Mines issues a list showing all its publications available for free distribution as well as those obtainable only from the Superintendent of Documents, Government Printing Office, on payment of the price of printing. Interested persons should apply to the Director, Bureau of Mines, for a copy of the latest list.

## *Publications Available for Free Distribution.*

Bulletin 120.—Extraction of gasoline from natural gas by absorption methods, by G. A. Burrell, P. M. Biddison, and G. G. Oberfell. 1917. 71 pp., 2 pls., 15 figs.

Bulletin 134.—The use of mud-laden fluid in oil and gas wells, by J. O. Lewis and W. F. McMurray. 1916. 86 pp., 3 pls., 18 figs.

Bulletin 148.—Methods for increasing the recovery from oil sands, by J. O. Lewis. 1917. 128 pp., 4 pls., 32 figs.

Bulletin 149.—Bibliography of petroleum and allied substances—1915, by E. H. Burroughs. 1917. 147 pp.

Bulletin 158.—Cost accounting for oil producers, by C. G. Smith. 1917. 123 pp.

Bulletin 162.—Removal of lighter hydrocarbons by J. M. Wadsworth. 1918. 164 pp., 50 pls., 45 figs.

Bulletin 163.—Methods of shutting off water in oil or gas wells, by F. B. Tough. 1918. 122 pp., 20 pls., 7 figs.

Bulletin 170.—Extinguishing and preventing oil and gas fires, by C. P. Bowie. 1918. 50 pp., 19 pls., 4 figs.

Technical Paper 32.—The cementing process of excluding water from oil wells, as practiced in California, by Ralph Arnold and V. R. Garfias. 1913. 12 pp., 1 fig.

Technical Paper 38.—Wastes in the production and utilization of natural gas, and methods for their prevention, by Ralph Arnold and F. G. Clapp. 1913. 29 pp.

Technical Paper 42.—The prevention of waste of oil and gas from flowing wells in California, with a discussion of

special methods used by J. A. Pollard, by Ralph Arnold and V. R. Garfias. 1913. 15 pp., 2 pls., 4 figs.

Technical Paper 45.—Waste of oil and gas in the Mid-Continent fields, by R. S. Blatchley. 1914. 54 pp., 2 pls., 15 figs.

Technical Paper 49.—The flash point of oils, methods  
32 and apparatus for its determination, by I. C. Allen and A. S. Crossfield. 1913. 31 pp., 2 figs.

Technical Paper 66. Mud-laden fluid applied to well drilling, by J. A. Pollard and A. G. Heggem. 1914. 21 pp. 12 figs.

Technical Paper 68.—Drilling wells in Oklahoma by the mud-laden fluid method, by A. G. Heggem and J. A. Pollard. 1914. 27 pp., 5 figs.

Technical Paper 72.—Problems of the petroleum industry, results of conferences at Pittsburgh, Pa., August 1 and September 10, 1913, by I. A. Allen. 1914. 20 pp.

Technical Paper 79.—Electric lights for oil and gas wells, by H. H. Clark. 1914. 8 pp.

Technical Paper 87.—Methods of testing natural gas for gasoline content, by G. A. Burrell and G. W. Jones. 1916. 26 pp., 7 figs.

Technical Paper 117.—Quantity of gasoline necessary to produce explosive vapors in sewers, by G. A. Burrell and H. T. Boyd. 1916. 18 pp., 4 figs.

Technical Paper 120.—A bibliography of the chemistry of gas manufacture, by W. F. Rittman and M. C. Whittake, compiled and arranged by M. S. Howard. 1915. 30 pp.

Technical Paper 127.—Hazards in handling gasoline, by G. A. Burrell. 1915. 12 pp.

Technical Paper 131.—The compressibility of natural gas at high pressures, by G. A. Burrell and I. W. Robertson. 1916. 11 pp., 2 figs.

Technical Paper 158.—Compressibility of natural gas and its constituents, with analyses of natural gas from 31 cities in the United States, by G. A. Burrell and I. W. Robertson. 1917. 16 pp., 9 figs.

Technical Paper 161.—Construction and operation of a single-tube cracking furnace for making gasoline, by C. P. Bowie. 1916. 16 pp., 10 pls.

Technical Paper 163.—Physical and chemical properties of gasoline sold throughout the United States during the calendar year 1915, by W. F. Rittman, W. A. Jacobs, and E. W. Dean. 1916. 45 pp., 4 figs.

Technical Paper 181.—Determination of unsaturated hydrocarbons in gasoline, by E. W. Dean and H. H. Hill. 1917. 25 pp.

Technical Paper 185.—Use of the interferometer in gas



analysis, by F. M. Seibert and W. C. Harpster. 1918. 18 pp., 1 pl., 5 figs.

*Publications That May Be Obtained Only Through the Superintendent of Documents.*

Bulletin 19.—Physical and chemical properties of the petroleum of the San Joaquin Valley, Cal., by I. C. Allen and W. A. Jacobs, with a chapter on analyses of natural gas from the southern California oil fields, by G. A. Burrell. 1911. 60 pp., 2 pls., 10 figs. 10 cents.

Bulletin 32.—Commercial deductions from comparisons of gasoline and alcohol tests on internal-combustion engines, by R. M. Strong. 1911. 38 pp. 5 cents.

Bulletin 43.—Comparative fuel values of gasoline and denatured alcohol in internal-combustion engines, by R. M. Strong and Lauson Stone. 1912. 243 pp., 3 pls., 32 figs. 20 cents.

Bulletin 65.—Oil and gas wells through workable coal beds; papers and discussions, by C. S. Rice, O. P. Hood, and others. 1913. 101 pp., 1 pl., 11 figs. 10 cents.

Bulletin 88.—The condensation of gasoline from natural gas, by G. A. Burrell, F. M. Seibert, and G. G. Oberfell. 1915. 106 pp., 6 pls., 18 figs. 15 cents.

Bulletin 114.—Manufacture of gasoline and benzene-  
33 toluene from petroleum and other hydrocarbons, by W. F. Rittman, C. B. Dutton, and E. W. Dean, with a bibliography compiled by M. S. Howard. 1915. 258 pp., 9 pls., 45 figs. 35 cents.

Bulletin 125.—The analytical distillation of petroleum, by W. F. Rittman and E. W. Dean. 1916. 79 pp., 1 pl., 16 figs. 15 cents.

Technical Paper 3.—Specifications for the purchase of fuel oil for the Government, with directions for sampling oil and natural gas, by I. C. Allen. 1911. 13 pp. 5 cents.

Technical Paper 10.—Liquified products of natural gas, their properties and uses, by I. C. Allen and G. A. Burrell. 1912. 23 pp., 5 cents.

Technical Paper 25.—Methods for the determination of water in petroleum and its products, by I. C. Allen and W. A. Jacobs. 1912. 13 pp., 2 figs. 5 cents.

Technical Paper 26.—Methods for the determination of the sulphur content of fuels, especially petroleum products, by I. C. Allen and I. W. Robertson. 1912. 13 pp., 1 fig. 5 cents.

Technical Paper 36.—The preparation of specifications for petroleum products, by I. C. Allen. 1913. 12 pp., 5 cents.

Technical Paper 37.—Heavy oil as fuel for internal-combustion engines, by I. C. Allen. 1913. 36 pp. 5 cents.

Technical Paper 51.—Possible causes of the decline of oil wells, and suggested methods of prolonging yield, by L. G. Huntley. 1913. 32 pp., 9 figs. 5 cents.

Technical Paper 53.—Proposed regulations for the drilling of oil and gas wells, with comments thereon, by O. P. Hood and A. G. Heggem. 1913. 28 pp., 2 figs. 5 cents

Technical Paper 57.—A preliminary report on the utilization of petroleum and natural gas in Wyoming, by W. R. Calvert, with a discussion of the suitability of natural gas for making gasoline, by G. A. Burrell. 1912. 23 pp. 5 cents.

Technical Paper 70.—Methods of oil recovery in California, by Ralph Arnold and V. R. Garfias. 1914. 57 pp., 7 figs. 5 cents.

Technical Paper 74.—Physical and chemical properties of the petroleum of California, by I. C. Allen, W. A. Jacobs, A. S. Crossfield, and R. R. Matthews. 1914. 38 pp., 1 fig. 5 cents.

Technical Paper 104.—Analysis of natural gas and illuminating gas by fractional distillation in a vacuum at low temperatures and pressures, by G. A. Burrell, F. M. Seibert, and I. W. Robertson. 1915. 41 pp., 7 figs. 5 cents.

Technical Paper 109.—Composition of the natural gas used in 25 cities, with a discussion of the properties of natural gas, by G. A. Burrell and G. G. Oberfell. 1915. 22 pp. 5 cents.

Technical Paper 115.—Inflammability of mixtures of gasoline vapor and air, by G. A. Burrell and H. T. Boyd. 1915. 18 pp., 2 figs. 5 cents.

Technical Paper 130.—Underground wastes in oil and gas fields and methods of prevention, by W. F. McMurray and J. O. Lewis. 1916. 28 pp., 1 pl., 8 figs.

#### Government's Exhibit 152.

Date	Inspector	Tank	Description	
6-24-18	Hanson	923	Cracked Gas	"
6-28-18	Hanson	923	Pts Nap	x
7-30-18	Hanson	Adg	Pts Nap	"
8-5-18	Hanson	Adg	Pts Nap	"
8-15-18	Weiman	Adg	Pts Nap	"
8-23-18	Hanson	Adg	Pts Nap	"
9-16-18	Hanson	Adg	Cracked Gas	"
9-30-18	Hanson	Adg	Cracked Gas	"
10-29-18	Hanson	923	Cracked Gas	"
11-4-18	Hanson	923	Cracked Gas	"
11-14-18	Hanson	923	Cracked Gas	"
12-2-18	Joliet	923	Cracked Gas	"
12-9-18	Hanson	923	Cracked Gas	x

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Exhibit 152--Continued.

Date	Inspector	Tank	Description	
12-17-18	Hanson	923	Cracked Gas	"
12-23-18	Hanson	923	Cracked Gas	"
1-6-19	Weiman	923	Hy Ptrs	"
1-17-19	Hanson	923	Crk Gaso	"
1-21-19	Hanson	923	Crk Gaso	"
2-4-19	Hanson	923	Crk Gaso	x
3-15-19	Hanson	Agd	Printers Nap	"
3-17-19	Hanson	Agd	Printers Nap	"
3-18-19	Hanson	x	Printers Nap	"
3-20-19	Hanson	843	Printers Nap	"
3-22-19	Hanson	Adg.	Printers Nap	"
4-7-19	Hanson	Adg.	Printers Nap	x
4-18-19	Hanson	Adg.	Printers Nap	x
2-28-18	Weiman	838	Printers Nap	"
3-22-18	Kooner	838	Printers Nap	x
4-9-18	Weiman	823	Printers Nap	"
4-10-18	Weiman	838	Printers Nap	"
4-12-18	Weiman	838	Printers Nap	"
4-12-18	Weiman	838	Printers Nap	"
4-15-18	Weiman	838	Printers Nap	"
5-7-18	Otey	923	Printers Nap	"
5-15-18	Weiman	923	Printers Nap	"
5-20-18	Weiman	923	Printers Nap	"
5-21-18	Weiman	923	Printers Nap	"
7-5-18	Weiman	923	Printers Nap	"
7-15-18	Weiman	923	Cracked Gas	"
8-15-18	Weiman	x	Painters Nap	"
8-22-18	Weiman	923	Cracked Gas	x
8-28-18	Porter	923	Cracked Gas	"
9-1-18	Weiman	923	Cracked Gas	"
9-3-18	—	923	Cracked Gas	"
9-5-18	Porter	923	Cracked Gas	"
9-24-18	Weiman	923	Cracked Gas	"
10-7-18	Weiman	923	Cracked Gas	"
10-13-18	Weiman	923	Cracked Gas	"
10-14-18	Weiman	923	Cracked Gas	"
10-20-18	Joliet	8x	Cracked Gas	"
10-25-18	Hanson	x	Cracked Gas	"
11-18-18	Joliet	923	Cracked Gas	"
11-19-18	Joliet	923	Cracked Gas	x
11-26-18	Joliet	923	Cracked Gas	"
11-27-18	Hanson	923	Cracked Gas	"
12-2-18	Joliet	923	Heavy Painters N	"

## Exhibit 152—Continued.

Date	Inspector	Tank	Description
12-23-18	Weiman	923	Heavy Painters N "
12-23-18	Weiman	923	Heavy Painters N x
12-31-18	Weiman	923	Heavy Painters N "
1-6-19	Weiman	923	Heavy Painters N "
1-18-19	Joliet	923	Heavy Painters N "
1-28-19	Weiman	923	Heavy Painters N "
1-25-19	Crow	x	Heavy Painters N "
1-29-19	Crow	x	Heavy Painters N "
2-3-19	Weiman	923	Heavy Painters N "
2-9-19	Weiman	923	Heavy Painters N "
2-10-19	x	923	Heavy Painters N "
2-15-19	Joliet	Agts 5	Heavy Painters "
2-15-19	Weiman	Agts 5	Naph "
2-17-19	Joliet	Agts 6	Naph "
2-18-19	Weiman	Agts 6	Naph "
2-21-19	Stansbury	Agts 5	Painters Nap "
2-24-19	Joliet	Agts 6	Painters Nap "
2-24-19	x	Agts 6	Painters Nap "
3-4-19	Joliet	Agts 6	Painters Nap "
3-6-19	Joliet	Agts 6	Painters Nap "
3-19-19	Stansbury	843	Painters Nap "
3-24-19	Joliet	Agt 4-5	Painters Nap "
3-25-19	Stansbury	Agt 4-5	Painters Nap "
3-25-19	Stansbury	Agt 4	Painters Nap "
4-2-19	Stansbury	Agt 6	Painters Nap "
4-3-19	Stansbury	Agt	Painters Nap "
x	x	Agt 5	Painters Nap "
4-10-19	Joliet	Agt 4	Painters Nap "
4-10-19	x	Agt 5	Painters Nap "
572			
4-16-19	Joliet	Agt 3	Painters Nap "
4-22-19	Stansbury	843	Painters Nap "
4-25-19	Stansbury	Agt 4	Painters Nap "
4-26-19	Cameron	Agt 3	Painters Nap "
4-28-19	Rushing	Agt 1	Painters Nap "
4-29-19	Rushing	Agt 1	Painters Nap "
4-29-19	Stansbury	Agt 1	Painters Nap "
5-2-19	Rushing	206	Painters Nap "
5-6-19	Stansbury	205	Painters Nap "
5-7-19	Stansbury	206	Painters Nap "
5-8-19	Joliet	Agt 6	Painters Nap "
5-14-19	Stansbury	205	Painters Nap "
5-15-19	Stansbury	204	Painters Nap "
5-23-19	Rushing	205	Painters Nap "

## Exhibit 152—Continued.

Date	Inspector	Tank	Description
5-26-19	Joliet	Agt 6	Painters Nap "
5-29-19	Joliet	201	Painters Nap "
6-2-19	Rushing	204	Painters Nap
6-10-19	Stansbury	843	Painters Dist.
6-10-19	Stansbury	206	Painters Nap
6-18-19	Stansbury	843	Painters Dist
6-20-19	Joliet	x	Painters Nap
6-20-19	Stansbury	843	Painters Dist
6-23-19	Stansbury	843	Painters Nap
6-24-19	Stansbury	843	Painters Dist
6-28-19	x	843	Painters Nap

573

Book	Page	Tank	Descrip	Date
No. 2	20	Agt 203	Painters Nap	9-16-16
2	82	Agt 2	"	9-22-16
2	130	Agt 1	"	10-18-16
2	188	Agt 5	"	11-17-16
2		205		
2	94	Agt 204	"	11-18-16
1	112	Agt 1	"	11-28-16
1	142	838	"	12-12-16
1	172	838	"	12-26-16
2	286	838	"	1-8-17
2	340	838	"	2-5-17
3	34	838	"	3-9-17
3	44	838	"	3-14-17
3	54	838	"	3-19-17
3	72	838	"	3-26-17
3	84	838	"	4-2-17
3	118	838	"	4-16-17
3	132	838	"	4-23-17
3	150	838	"	4-30-17
3	164	838	"	5-7-17
3	170	838	"	5-9-17
3	176	838	"	5-11-17
3	180	838	"	5-14-17
3	194	x	"	5-21-17
Not shipped				
3	198	838	"	5-22-17
3	242	838	"	6-11-17
3	264	838	"	6-20-17
3	270	838	"	6-22-17

## Exhibit 152—Continued.

Book	Page	Tank	Descrip	Date
3	274	Adg 206	"	6-25-17
			574	
3	280	838	"	6-27-17
3	288	x	"	7-2-17
3	304	838	"	7-9-17
3	336	838	"	7-23-17
3	348	838	"	7-27-17
3	352	838	"	7-30-17
4	24	x	"	4-10-17
4	54	838	"	4-21-17
4	128	838	"	5-29-17
4	150	838	"	6-5-17
4	346	838	"	8-30-17
4	358	x	"	9-5-17
No. 5	4	838	"	8-10-17
5	9	838	"	8-13-17
5	37	838	"	8-27-17
5	44	x	"	8-29-17
5	70	838	"	9-11-17
5	85	838	"	9-18-17
5	146	838	"	10-15-17
5	183	838	"	11-1-17
5	188	838	"	11-4-17
5	214	838	"	11-15-17
5	221	838	"	11-17-17
5	250	838 & 805	"	12-4-17
5	263	838	"	12-11-17
5	306	838	"	1-5-18
5	316	838	"	1-10-18
5	340	838	"	1-24-18
5	347	838	P. N.	1-26-18
6	28	838	Ptr-Nap	9-21-17
6	35	838	"	9-24-17
			575	
6	40	838	"	9-26-17
6	50	838	"	10-1-17
6	73	838	"	10-8-17
6	108	838	"	10-22-17
6	115	838	"	10-24-17
6	144	838	"	11-5-17
6	177	838	"	11-19-17
6	180	838	"	11-21-17
6	186	838	"	11-23-17
6	196	838	"	11-28-17

## Exhibit 152—Continued.

Book	Page	Tank	Descrip	Date
6	208	838	"	12-3-17
6	240	838	"	12-16-17
6	246	838	"	12-17-17
6	262	838	"	12-14-17
6	272	838	"	12-28-17
6	304	838	"	1-9-17

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Date	Inspector	Tank	Description
2-18-18	Otey	838	Printers Nap
2-19-18	Otey	838	Printers Nap
3-1-18	Otey	838	Printers Nap
3-4-18	Otey	838	Printers Nap
3-25-18	Otey	838	Printers Nap
4-6-18	Otey	923	Printers Nap
4-8-18	Otey	838	Printers Nap
4-9-18	Weiman	838	Printers Nap
4-11-18	Otey	838	Printers Nap 576
2-4-18	Koonce	838	Printers Nap
2-12-18	Koonce	x	Printers Nap
3-11-18	Koonce	838	Printers Nap
3-18-18	Koonce	838	Printers Nap
3-19-18	Koonce	x	Printers Nap
3-20-18	Koonce	838	Printers Nap
3-21-18	Koonce	838	Printers Nap
4-22-18	Koonce	x	Printers Nap
4-23-18	Koonce	x	Painters Nap
5-8-18	Koonce	923	Painters Nap
5-8-18	Koonce	923	Painters Nap
5-27-18	Koonce	923	Painters Nap
6-4-18	Koonce	923	Painters Nap
6-10-18	Koonce	923	Painters Nap
6-10-18	Koonce	923	Painters Nap
6-17-18	Otey	923	Painters Nap
6-17-18	Koonce	923	Painters Nap
7-21-18	Koonce	923	Cracked Gas

Endorsed: Filed Jan. 10, 1921, W. V. McClure, Clerk U. S. District Court, Eastern District of Oklahoma.

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And on the same day, to-wit, the 10th day of January A. D. 1921, the defendant filed petition for writ of error, together with its assignment of errors, which petition was allowed by the court. Said petition for writ of error, assignment of errors and order allowing writ of error are in words and figures as follows:

In the United States District Court of the Eastern District of Oklahoma. United States of America, Plaintiff, vs. Gulf Refining Company, a Corporation, Defendant.—No. 3716 Criminal.

**Petition for Writ of Error.**

To the Honorable Robert L. Williams, Judge of the United States District Court for the Eastern District of Oklahoma:

Now comes the Gulf Refining Company, a corporation, defendant in the above and foregoing cause, and conceiving itself aggrieved by the final order, decree, judgment and sentence entered in the above entitled cause on the 10th day of January, 1921, in favor of the United States and against this defendant, shows unto this Honorable Court that in the record, proceedings and rendition of such final order, decree, judgment and sentence entered as aforesaid, manifest error herein occurred greatly to its damage, and by which it feels itself aggrieved, all of which more fully and particularly appears in and from the Assignments of Error which is filed with this petition.

Wherefore, said Gulf Refining Company prays that a Writ of Error be issued in said cause to the United States Circuit Court of Appeals of the Eighth Circuit, for the correction of said errors, and the reversal of said cause, directing the Clerk of this Court to transmit to the Clerk of the United States Circuit Court of Appeals of the Eighth Circuit, at St. Louis, Missouri, for filing in said court a true and correct copy and transcript of the record in said cause within sixty days from date hereof, to-wit, on or before the 11th day of March, 1921, in order that said manifest error may be corrected and justice done, and that a citation be issued to the United States of America requiring the United States to be and appear in said Circuit Court of Appeals of the Eighth Circuit, at St. Louis, Missouri, within sixty (60) days from the date of said citation, to show cause, if any it have, why said manifest error should not be corrected and justice done.

The said Gulf Refining Company, having filed herein its assignments of error, also prays that in addition to issuance of said Writ of Error, that an order be made superseding the final order, judgment, decree and sentence entered in said cause, and an order be made and entered fixing the amount of security which said defendant will be required to give and furnish to supersede said judgment and the cost of said Writ of Error, and that defendant be allowed ten (10) days from this date in which to furnish said security, and that said final order, judgment, decree and sentence in said cause be superseded for and during the ten (10) days allowed for the furnishing of said security, and that on the furnishing of said security and the approval thereof, that said judgment, final order, decree and sentence be superseded and stayed until the final disposition of the said Writ of Error and the proceedings had thereon. And said defendant herewith submits its Assignments of Error.

R. L. BATTS,

JNO. E. GREEN, JR.,

JAMES B. DIGGS,

FRANK M. SWACKER,

*Attorneys for Gulf Refining Company.*

Endorsed: Filed in open court Jan. 10, 1921, W. V. McClure, Clerk U. S. District Court.

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In the District Court of the United States, for the Eastern District of Oklahoma. United States of America, Plaintiff, against Gulf Refining Company, Defendant.—No. 3716. Criminal.

**Assignments of Error and Prayer for Reversal.**

Filed January 10, 1921.

The defendant, Gulf Refining Company, assigns as error prejudicial to it in the record, proceedings, judgment and sentence of the court, in the above-entitled cause, that the court erred:

1. In sustaining the plaintiff's demurrer to defendant's plea in abatement as to each count of the alleged indictment herein, because the same was not a true bill found according to law by the grand jury.

II. In denying defendant's motion to strike the alleged indictment herein from the files of the court as not being a true bill found according to law by the grand jury.

III. In overruling and denying defendant's motion to take proof on its motion to strike said alleged indictment from the files as not being a true bill found according to law by the grand jury.

IV. In overruling and not sustaining defendant's special demurrer, to the counts numbered 36 to 40, inclusive, and 81 to 85, inclusive, of the said indictment, because the said counts are double, in that each of said counts attempts to charge two separate and distinct offenses, that is, (a) the offense of accepting a concession whereby property should be transported at less than the lawful rates, and (b) accepting a concession whereby a discrimination would be procured.

V. In overruling and not sustaining defendant's demurrer to each count of the indictment, which demurrer should have been sustained upon each of the following grounds, to-wit:

(a) Because the matters and things set forth and charged do not constitute an offense against the laws of the United States.

(b) Because the averments of each count of said indictment are too general, vague, indefinite and uncertain to inform the defendant of the nature and cause of the accusation against it, or apprise it with such reasonable certainty of the offense with which it is charged or what it may expect to meet on the trial, so as to enable it to make its defense.

(c) Because the averments of each count of said indictment are so vague, indefinite and uncertain, consisting in the pleader's conclusion, as to what constitutes a concession, that the court is unable to say as a matter of law whether the acts of defendant constitute an offense against the United States.

VI. In denying defendant's motion to instruct a verdict for the defendant, based on the admissions of the Government in its opening statement to the jury that it proposed to prove that defendant had shipped casinghead gasoline and casing-

head gasoline blended with naphtha, whereas the indictment charges the defendant with having shipped gasoline, for the following reasons:

(a) Because it was apparent that the proof would be at variance with the charge in the indictment.

(b) Because it is a scientific fact, of which the court has judicial knowledge, that casinghead gasoline is not the same commodity as, but different from, gasoline.

(c) Because the admission that the commodity actually shipped was casinghead gasoline and not gasoline disclosed that the controversy involved the construction and determination of whether the tariff naming rates on gasoline embraced and applied to casinghead gasoline, or whether the tariff on unrefined naphtha embraced and applied to casinghead gasoline, of which character of controversy the court had no jurisdiction, such jurisdiction being vested solely in the Interstate Commerce Commission.

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And in admitting evidence at the trial offered by the United States and overruling the defendant's objections thereto, to which rulings the defendant then and there duly excepted, in each of the following instances, to-wit:

VII. In permitting Exhibit No. 1 to be read in evidence, said exhibit being set forth in full in defendant's bill of exceptions and in substance showing that all the stock, excepting shares held by directors, of the Gulf Refining Company, Gypsy Oil Company and Gulf Pipe Line Company, was owned and controlled by the Gulf Oil Corporation.

VIII. In admitting the testimony of the witness Riedeman in substance that prior to December 2, 1916—the date upon which the tariff publishing rates on unrefined naphtha became effective, and that description was adopted by the Gypsy Oil Company—the Gypsy Oil Company had been accustomed to describe its shipments from Kiefer, Oklahoma, to Port Arthur, Texas, as gasoline, such evidence having been admitted by the court upon the theory of establishing a course of conduct, whereas there was no showing of a similarity in material respects of the surrounding circumstances, the evi-

dence on the contrary showing dissimilarity in the vitally material respect that there was no tariff publishing rates on unrefined naphtha previous to said date.

Said testimony being as follows:

"By the Court: As shown in Exhibit 2 of this identical commodity according to his best recollection were made, were billed out as gasoline. You have got that in so I will not permit you to put these in the record, I will not permit them to be introduced, in the record, he has already testified.

"By Mr. Swacker: We interpose an objection to the testimony on the ground of irrelevancy.

"By the Court: Very well I will permit that, these prior shipments made under the direction of the same superintendent, Mr. Mallard?

"A. Yes, sir.

"By the Court: I will permit that to show the conduct of their business.

"By Mr. Swacker: If your honor understands the basis of our objection we don't deny—

"By the Court: That comes afterwards as a matter of explanation.

"By Mr. Swacker: But we deny the relevancy. This is attempting to show a rule or course of conduct in respect to other things than those alleged in the indictment and we say any explanation of such course of conduct must be negatived at this time and for that reason it is incompetent, irrelevant and immaterial.

"By the Court: I will permit it for this reason. The Government says this was gasoline and not unrefined naphtha. That is their contention now the shipments from the same points by the same concern that conducted the business that is the circumstance for the jury to consider in weighing the evidence. This was prior to a certain date that they shipped it as gasoline. Now they may of course, I am assuming the explanation that will be admitted on the part of the name used by the defense they could have called it either name and for certain reason and for their convenience they used either name. I will instruct the jury not to make up your minds on any part of the evidence; that when you hear the evidence in this case you always keep your minds open remembering

all of the evidence as near as you can and keep your minds open and hear the last part of the evidence and then keep your mind open and not make up your mind until you have heard the argument and the instructions of the court.

"By Mr. Diggs: We want to get in an exception. We object to the introduction of the evidence as incompetent, irrelevant and immaterial.

"By Mr. Payne: What evidence.

"By Mr. Diggs: The answer of the witness the court permitted him to answer. And for the further reason the Government states that it is for the purpose of proving a course of conduct and the fact surrounding the different shipments not being shown to be identical and similar in the material respects of the rate and for the further reason that at the time the ten papers in Exhibit 2 mentioned the only rate in existence by which it could be shipped was the classification of gasoline as shown by the tariff.

"By the Court: Now on these shipments that are referred to originated at the same point Kiefer and brought the same rate to Port Arthur.

"A. Yes, sir.

"By the Court: And was the same material—same commodity according to your best recollection?

"Yes, sir.

"By the Court: And shipped for the same purpose.

"Yes, sir.

"By the Court: Very well you may have your exception." (S. M., pp. 46-48.)

IX. In admitting the evidence while the witness Sweet was on the stand in substance to the effect that the material shipped northbound from Port Arthur to Kiefer by the Gulf Refining Company before December 2, 1916, was described by it as naphtha, whereas thereafter it was described by it as crude unfinished naphtha; December 2, 1916, being the date upon which the tariff publishing rates on crude unfinished naphtha became effective; said evidence having been admitted by the court for the purpose of showing the conduct of defendant's business, whereas there was no showing of similarity of surrounding circumstances, but, on the contrary, the evidence showed such

circumstances to be different in a vitally material respect in that previous to said date there were no tariffs published naming rates on crude unfinished naphtha.

Said testimony being as follows:

"The Court: I understand prior to December 2, 1916, that the government offers to prove——

"Mr. Chambers: That the northbound shipments——

"The Court: That this commodity which was shipped from Port Arthur to Kiefer for the purpose of being blended with the casinghead gas was billed as naphtha.

"Mr. Swacker: Yes, sir.

"The Court: And that after December 2nd it was billed as crude naphtha?

"Mr. Swacker: Crude unfinished naphtha. We don't want this statement in the record that we put it in.

"The Court: No, I said the government, and the defendants save an exception to its relevancy or materiality in order to shorten the record, admit the fact.

"By Mr. Swacker: We want the basis of our objection——

"By the Court: And the court admits this for the purpose for showing the conduct of the business and during that period and grant an exception to the defendant.

"By Mr. Swacker: And we want to go further and state the basis of our objection. We assume this evidence to be offered as stated by the court indicating the course of conduct and we say it would be admissible only if it were shown that all the surrounding circumstances were identical, especially the material circumstances that under the evidence as stated there was a change in the rate which was the most material circumstance, and no offer has been made to prove that the circumstances were identical or such a basis as would admit this evidence and wherefore we say it is incompetent, irrelevant and immaterial.

"By the Court: For the present it is admitted and your exceptions saved." (S. M., pp. 73, 74.)



X. In admitting the testimony of the witness Sweet as follows:

"Q. You never called the blended stuff you shipped from Kiefer, unrefined naphtha until after the 2nd of December, 1916, did you? A. No, sir.

"Mr. Swacker: We object to that on the same ground as the previous question.

"By the Court: Very well.

"By Mr. Swacker: Give us an exception.

\* \* \* \* \*

"Q. You never heard the product that is produced from the compression plant called unrefined naphtha until after the 2nd of December, 1916, and you know that prior to that time it was always called casinghead gasoline and is yet?

"By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and the witness not being shown to have a knowledge, assumed to him that it was called this prior to December 2, 1916.

"By the Court: Objection overruled. You may have an exception.

"Mr. Diggs: To the last part of the question we object as calling, or assuming that the witness knows a state of facts that is not shown in evidence that he does know. The first part we have no objection.

"The Court: I will let him answer.

"Mr. Green: We object to the method. It is not shown that the witness is entirely unwilling to answer.

"The Court: I will permit it.

"Mr. Green: And I think it is argumentative—

"The Court: Answer the question.

"A. After that date it was known as unrefined naphtha and prior to that date, commonly known as gasoline." (S. M., pp. 77-80.)

XI. In admitting the testimony of the witness Sweet as follows:

"Q. Now after the 2nd of December, 1916, you say you shipped this commodity at Kiefer that was blended as unrefined naphtha to Port Arthur? A. Yes, sir.

"Q. At that same time you shipped this same commodity that was blended to a Shady Side, Pennsylvania, as gasoline, didn't you?

"By Mr. Swacker: Object to both the form of the question as a deliberate attempt to get out a fact which we insist is irrelevant and to the answer on the same ground that it is utterly irrelevant, the circumstance not being shown as to what the rates and regulations provided to Shady Side.

"By Mr. Diggs: Further that it is an assumption that the Gypsy has shipped and that this witness knows.

"By the Court: I will permit the form of the question. I have heard the evidence of this witness but I want to see. You say at the same time while you were shipping this product from Kiefer to Port Arthur as unrefined naphtha you were shipping it to the Shady Side plant at Pittsburgh? Now who owns the plant at or near Pittsburgh?

"A. Gulf Refining Company.

"The Court: And what was it shipped there for, what purpose was it shipped to Shady Point?

"A. I am not in a position to say. It was shipped there, that is a distributing point I believe, I have never been there, I don't know what it is.

"The Court: I will permit the question to be asked.

"Mr. Diggs: We save an exception.

"The Court: Very well.

"Q. Answer the question. Do you remember the question?

"A. That is with reference to shipping to Pittsburgh?

"Q. Yes. A. Yes, sir.

"Q. And you shipped it as gasoline?

"A. Yes, sir, and we shipped it—

"Mr. Chambers: Now I never asked you that.

"The Court: If he wants to volunteer that, that is a matter for the jury to determine. Go ahead if you want to volunteer an explanation, the court will permit you to do that.

"A. We shipped this product to Port Arthur as unrefined naphtha because the tariff gave us a rate to Port Arthur. They didn't give us a rate to Pittsburgh and consequently we shipped it to Pittsburgh as gasoline.

"Q. In other words, until the unrefined naphtha rate from your standpoint is put into effect, the designated term for shipping purposes of this commodity is gasoline. that is right? A. The only term we had for it.

"Q. Only term you had for it and shipped it as gasoline for that reason? A. Yes, sir.

"Mr. Swacker: Now we would like to renew our objection to this line of questions and ask that it be stricken out obviously as immaterial and wholly irrelevant, it being apparent the conditions were not the same.

"The Court: That is a question of fact for the jury to determine. They are the facts and the jury looks into them and sees. I think it is all right to make this explanation to show he is an employee of the oil company. The jury weighs that and weighs the reasons, if there are any reasons, and they weigh it. That is the issue in this case, the way I understand it, if it is properly termed under this tariff 'Unrefined Naphtha'. I will permit all this evidence to go to the jury for them to weigh it.

"Mr. Swacker: We want an exception.

"The Court: Very well." (S. M., pp. 91-93.)

XII. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 5, 6, 7, 8 and 9, consisting in shipping orders of the Gypsy Oil Company covering shipments from Kiefer to Port Arthur made previous to December 2, 1916, in which the commodity was described as gasoline, and the testimony of the witness Manson in relation thereto.

Said testimony being as follows:

"Q. I am handing you papers identified by the stenographer as Exhibits 5, 6, 7, 8 and 9 and ask you what they are and if you signed them? A. Yes, sir, I did.

"Q. What is the date of Exhibit No. 5?

"A. November 2nd.

"Q. And what is the date of Exhibit No. 6?

"A. November 4th.

"Q. And what is the date of Exhibit No. 7?

"A. November 7th.

"Q. And Exhibit 8?

"A. November 11th, I didn't sign that one marked Exhibit 8.

"Q. What are those papers, the general term?

"A. They are bills of lading.

"Q. They are bills of lading? A. Yes, sir.

"By the Court: Who signed Exhibit No. 8, if you know?

"A. Mr. Millard.

"By the Court: Who?

"A. He was Superintendent, Assistant Superintendent.

"Q. Do you know his handwriting?

"A. Yes, sir, I believe that is it.

"Mr. Chambers: We will offer these in evidence, if the court please.

"The Court: Show them to the other side.

"Q. What was the year? A. I believe it was 1916.

"Mr. Swacker: We desire to object to these as being incompetent, irrelevant and immaterial, they being matters not properly proven as under similar circumstances and conditions, but on the contrary the evidence already in the case showing a different set of circumstances and conditions surrounding it.

"The Court: What is that they are offering?

"Mr. Swacker: They are shipments before December 2, 1916.

"Mr. Chambers: And shipped as gasoline.

"The Court: I will admit them.

"Mr. Swacker: Exception, please.

"Mr. Chambers: May I ask the court, will it be proper instead of reading these—

"The Court: They may be considered read and you may call attention to them later.

"Mr. Chambers: Then they can be considered as read?

"The Court: They may be considered as read. They are only admitted for the purpose of showing the conduct of the business.

"Mr. Chambers: That is all.

"The Court: And the evidence is already in and the only reason I admit them now is because there was an objection to them and then I am going to instruct the jury they are not to give undue importance to this evidence; that is the reason I excluded them you know.

"Mr. Chambers: Of course we have no other evidence in connection with that.

"The Court: The defense by their objection brought the admission of the papers themselves on themselves." (S. M., pp. 160-162.)

XIII. In admitting in evidence and permitting to be read to the jury that portion of Exhibit Number 2, consisting in shipping orders of the Gypsy Oil Company dated prior to December 2, 1916, describing shipments of gasoline, and the testimony of the witness Riedeman relating thereto.

Said testimony being as follows:

"Q. Your name is Riedeman? A. Yes, sir.

"Q. I am handing you a bunch of what purports to be shipping orders and embracing ten shipping orders, marked yesterday as Exhibit 2, and I will ask you to state if those shipping orders were made out by you while you were in the employ of the Gypsy Oil Company?

"A. They were.

"Q. And those shipments made from—well, I don't know, where were they made from?

"A. I will have to look at those.

"Q. I don't know where to look.

"A. From Kiefer to Port Arthur.

"The Court: Where were the other shipments, that other batch from?

"Mr. Chambers: Kiefer, Oklahoma, it states there.

"The Court: Where to?

"Mr. Chambers: Kiefer, Oklahoma, to Port Arthur. Now we will offer these in evidence.

"Mr. Swacker: We desire to make the same objection to these as being matters *res inter alia*, and no proper foundation laid for the introduction, the circumstances already in evidence showing that the rates were different at the time these shipments were made, all being before December 2, 1916.

"The Court: I will permit them to be introduced.

"Mr. Swacker: We except.

"The Court: To show the conditions, and I will instruct the jury later on, and they may be marked and considered as read. Of course when the question arises and where all the evidence is in, if there is a theory reasonable and in accordance with all the evidence the contention of the defendant as to the change, then that will destroy any evidential presumption that may be raised in favor of the government. I will cover that in instructions later on.

"Mr. Swacker: I except.

"Mr. Swacker: We may have an exception.

"The Court: Very well." (S. M., pp. 162, 163.)

XIV. In admitting the testimony of the witness Waddell, the agent of the Kansas City Southern Railroad, in substance that he collected the rate applicable to gasoline upon the shipments, moving previous to December 2, 1916, covered by the shipping orders embraced within Exhibit 2.

Said testimony being as follows:

"Referring to Government's Exhibit No. 2, covering shipments from Kiefer, Oklahoma, in November, 1916, and by the Gypsy Oil Company, gasoline department, and consigned to the Gulf Refining Company at Port Arthur, and billed as gasoline, can you state what rate was collected on those shipments?"

"The Court: What basis of rate?"

"Q. What basis of rate?"

"Mr. Swacker: As he puts the question, he can or will he?"

"The Court: He is asking if he can state——"

"Mr. Swacker: We object to the question as being irrelevant, incompetent and immaterial.

"Q. Mr. Waddell, as a general railroad practice——"

"The Court: No, he has not answered the question yet.

"A. The freight charges were collected on the rate, gasoline rate.

"The Court: On the rates prescribed for gasoline?"

"A. Yes, sir.

"The Court: The commodity shipped as gasoline?"

"A. Yes, sir." (S. M., p. 213.)

XV. In permitting the Government's counsel to read from a book described by him as Exhibit 21, not in evidence, respecting which the witness Timmons testified as follows:

"By Mr. Payne: Mark this Government's Exhibit 21.

"Q. I show you exhibit 21 for identification and call your attention to the second and third and fourth and fifth and sixth entries which show gasoline——"

"By Mr. Swacker: I object to his question.

"By the Court: Let him get the question in and don't answer until I pass on it.

"Q. As to Tanks 511, 512, 805, 357 and 922 I will ask you to state to the court if you know how the inspectors, how the inspectors inspected the contents of those tanks to determine the fluid in those tanks was gasoline?

"By Mr. Swacker: I object to the witness testifying about the papers, it is now shown he ever saw it or knows anything about it or he made the entries or he had anything to do with it and he testifies the inspector was not under his direction.

"By the Court: The question is if you know how they determine that. That is merely for the purpose of identification of a fact, directing the attention of the witness to it. If you know how the inspector determines, by what process to determine whether that was gasoline, if you know that you may answer that.

"A. This report is not complete.

"The Court: Now you answer the question, do you know how they determined that?

"A. I know how they determine it.

"The Court: Very well.

"Q. State that?

"The Court: What is that now?

"Q. He says he knows how they determine it, state it then.

"A. Well, they take gravity, color and distillation.

"Q. Is it not a fact that if the gravity is fifty-seven or above, you designate it as gasoline, and that if it is fifty-six or some few points below, fifty-six or fifty-five, the inspectors designate it as naphtha; if it is between fifty-five and fifty-seven they come to you for instructions as to whether they will designate it as gasoline or as naphtha?

"A. They don't come to me for instructions at all. I stated before that was not left to me at all.

"The Court: Now, you have answered the first part. You ought not to put so many questions in one. Now you asked him three questions in one, and he answered the last.

"Mr. Payne: Thank you for the suggestion.

"Q. If the gravity—is it not a fact that if the grav-



ity is fifty-seven or higher, it is the general custom and course of business to designate the fluid in that tank as gasoline?

"A. Might be with them, but it ain't with me.

"The Court: What was it the custom in that laboratory?

"A. The custom shows here that is what they called it.

"Q. That is, they called it gasoline if the gravity was fifty-seven or higher? A. Yes.

"Q. Suppose that the gravity was fifty-five, what was it the custom to designate it on those sheets?

"A. Well, it shows here——

"The Court: Well, never mind what is on that sheet. I don't permit what is on that sheet. What did they do, what did the experts in the laboratory whose duty it was to examine the samples, now what did they do, how did they designate it?

"Mr. Swacker: I object to that, it is not shown that these are experts, they are boys and under somebody else's instructions; and he is stating what he assumes to be the custom of those boys in making these tests.

"The Court: Well, he testified they worked in the laboratory; you would naturally assume that they were experts. What experience did those people that make the tests have?

"A. Weighing up the oil and running distillations and taking color.

"The Court: Well, did that experience qualify them to do that kind of work?

"A. Yes, sir.

"The Court: The qualification that is required in the usual oil laboratory for such people. Now I will give you all a chance to cross examine as to qualification if you want to.

"Mr. Swacker: At this time?

"The Court: Yes, I will permit you just like on voir dire to ask questions, and I will pass on whether they are qualified to do that.

*Examination by Mr. Swacker.*

"Q. What is the age of these inspectors you speak of?

"A. They run from eighteen, twenty-five, twenty-six and twenty-seven years old.

"Q. Are they what you might consider as student chemist? A. No, sir, not in that department.

"Q. Are they chemists at all? A. No, sir.

"Q. They merely perform the distillation tests which is a mechanical process? A. Yes, sir.

"Q. And put down the instances shown by the distillation test? A. Yes, sir.

"Q. They have nothing to do with the classification of the material they test? A. No, sir.

"Q. Whatever name they may use or enter is such as they themselves may adopt without any effort of accuracy as a matter of classification, not such as they may be instructed to? A. Yes, sir.

"Q. Is that right? A. Yes, sir.

"By Mr. Swacker: I don't think the entries are admissible—

"By the Court: These boys as you call them that work there in making these tests to determine the color and the gravity, they determine the gravity and the color and what else do they determine?

"A. They determine the distillation—

"By the Court: The distillation, the color and the gravity, now how would they determine it?

"A. By weight of the oil.

"By the Court: They determine the distillation by the weight?

"A. Run through an Engler flask.

"By the Court: Run it through an Engler flask and that would show the distillation would it?

"A. Yes, sir.

"By the Court: And then they took the color by what means, by what means did they take the color?

"A. Through a machine, two tubes to it, one is empty and the other is filled up with this oil, there is a middle faucet on that and a microscope on the top and by looking through they match these two colors. When both discs match, that was your color.

"By the Court: Now there is a distillation, the process of determining distillation and the process of determining the color, now the next is determining the specific gravity, how did they do that?

"A. That is by hydrometers and a thermometer.

"By the Court: Now their experience in making these tests under the processes outlined by you?

"A. Yes, sir, they could do that if they had enough experience they could.

"By the Court: Well were they tested before they were put in there to do that kind of work?

"A. They were broke into it, they gradually worked up to it.

"By the Court: Now you say they were fitted to determine the distillation and the specific gravity and the coloring. Now how would they determine what it was, where did they get that?

"A. That might have been their own conception of it.

"By the Court: Now were they instructed as to that by their superior officers who were expert chemists?

"A. I cannot say I don't know about that.

"By Mr. Swacker: May I ask another question?

"By the Court: Yes.

*Examination by Mr. Swacker.*

"Q. They had nothing to do with the classifying of this material? A. No, sir.

"Q. That was no part of their work? A. No, sir.

"Q. All they were there for to determine or ascertain what the distillation was, what the gravity was and what the color was and record that? A. Yes, sir.

"Q. And that was the classification so far as any classification was made? A. Yes, sir.

"Q. There was no classification by name? A. No, sir.

"By the Court: How it is competent, after the processes of making these records, I hold the evidence shows they were expert enough to determine the specifications, gravity and the distillation and as to the coloring by these processes. I will let that much go to the jury. Now then you can introduce as to the name of it, you will either have to show that was done by an expert or they were instructed by an expert as to the names to meet the tests to determine by it.

"By Mr. Swacker: Then will the court ask the jury to disregard those entries.

"By the Court: These entries have not been introduced, the jury don't consider anything except what is admitted in evidence before them. That is merely a predicate thus far and not admitted to the jury and merely shown to the witness for directing his attention to a question." (S. M., pp. 234-240.)

XVI. In admitting in evidence and permitting to be read to the jury Exhibits 21 and 22, and admitting the testimony of the witness Anderson in respect to the practice of the Totem Gasoline Company; for the reasons that the practice of the Totem Gasoline Company was in no way binding upon this defendant, that it was not shown that the material circumstances surrounding the business of the Totem Gasoline Company were identical or similar to those surrounding shipments to defendant, that the manner in which the Totem Gasoline Company described its products for shipment was not competent to prove what was the proper name of the commodity shipped by the Gypsy Oil Company, and that it was not competent to prove a general custom by showing individual instances; said testimony being as follows:

"Q. State your position with the Totem Gasoline Company?

"A. I am general superintendent over the four plants.

"Q. Where are the four plants located?

"A. The Totem is at Jenks, the Kadeshan and Shade at Stone Bluff, and Kadeshan is at Broken Arrow.

"Q. Now referring to the plant at Jenks, state what kind of a plant it is and what you produce.

"Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial. The Gulf Refining Company—

"The Court: What is the purpose of this offer?

"Mr. Payne: Your honor, certain counts allege discrimination against the Totem Gasoline Company in that—I will state it if you want me to.

"The Court: Yes.

"Mr. Payne: In that they shipped casinghead gasoline and billed it on the railroad as casinghead gasoline or gasoline, and they paid the gasoline rate, and we will show that their product is precisely the same product.

"The Court: Very well, get your objection.

"Mr. Diggs: We object as being incompetent, irrelevant and immaterial, not within the issues of this case, and not being shown that the Gulf Refining Company is connected with or interested in any of the plants with which the witness has said that he is connected, and that their practice and method of

shipment would be hearsay as far as the defendant in this case is concerned.

"The Court: I will allow your exception.

"Mr. Diggs: Exception.

"Q. What kind of a plant is it, Mr. Anderson?

"A. It is a compression,—

"Q. Compression what? A. Gasoline plant.

"Q. Compression gasoline plant? A. Yes, sir.

"The Court: You want to confine this to the period named in the indictment.

"Q. During the period from January 1, 1918, to June 1, 1918, did the Totem Gasoline Company of Jenks produce casinghead gasoline?

"Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not within any of the issues raised in this case, and the defendant is not shown to be connected with any such plant.

"The Court: The objection is overruled.

"Mr. Diggs: The defendant excepts.

"A. (No response.)

"Q. State briefly the process by which you produce casinghead gasoline, very briefly?

"Mr. Diggs: We object—hold on.

"The Court: Have your objection on the same ground, the objection is overruled and exception noted.

"Mr. Diggs: In order to preserve the record, and under some of the rulings we have to state what our objections are. To state we have them on the same ground does not amount to anything.

"The Court: On the same ground as stated above, just say the same objection made on the same ground as above, and the same ruling and exceptions allowed.

"Q. I asked you how you produced—

"By Mr. Diggs: The defendant in this case states his objection in that manner owing to the direction of the court.

"By the Court: That will be allowed as if set out word for word as above. Go ahead, let's get through.

"Q. Answer the question, Mr. Anderson?

"A Produce the gasoline by the regular system of compression plants.

"Q. That is go ahead, tell how you get the gas out of the well and what is done with it?

"A. It is pumped to the plant by vacuum pumps.

"By Mr. Diggs: To which we object on the same grounds state- above.

"By the Court: Same grounds set out specifically as above and the objection is overruled and exception save-.

"Q. Go ahead Mr. Anderson.

"A. And is discharged from the vacuum pump to the compressors which run from a low stage to 40 or 50 pound pressure, whatever your load is and then goes to the high stage which is compressed from 375 to 400 and then put into the coils and condensed and the accumulation of that condensation is what makes the raw gasoline.

"Q. Now after the raw gasoline is produced do you blend it with any product? A. Yes, sir.

"By Mr. Diggs: To which we object—

"By the Court: Objection on the same ground overruled and exception saved.

"Q. What do you blend it with?

"By Mr. Diggs: Same objection and exception as above by direction of the court.

"By the Court: Overruled, exception saved.

"A. Blended usually with naphtha.

"Q. Do you weather it after you blend it?

"A. If the vapor tension is too high to ship.

"Q. Well now what do you mean by vapor tension?

"By Mr. Diggs: To which we object as being incompetent and immaterial, not relating to the issues in this case.

"By the Court: Overruled, exception saved.

"A. The vapor tension is the pressure that gathers on the tank after it is confined from agitation or raising of the temperature.

"Q. Why do you weather it, in order to lower that vapor tension?

"By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, the witness not being shown to act under direction or in concert with the defendant in this case. The manner in which he operates this plant being hearsay and immaterial to this case.

"By the Court: Objection overruled, exception allowed.

"Q. I want to bring out for what purpose you lower the vapor tension? A. To make it safe in shipment.

"Q. How did you describe this product for shipment?

"By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and hearsay as far as the defendant is concerned and not the best evidence.

"By the Court: I will permit to state how it is billed out. I will permit you to introduce the shipping orders.

"Mr. Payne: Mr. Reporter, mark these two papers Government's Exhibits 22 and 23.

(Said papers were so marked by the Reporter.)

"Q. Mr. Anderson, I show you two papers marked Government's Exhibits 22 and 23—pardon me, Mr. Diggs—and I will ask you to state what they are. I will show them to you in just a moment.

"The Court: Answer the question.

"A. They are forms of bills of lading we use in billing out our product from our gasoline plant.

"The Court: Is that a bill of lading used by them? A. Yes, sir.

"Q. Are those bills of lading in your handwriting, Mr. Anderson? A. Yes, sir.

"Mr. Payne: I offer these in evidence—I beg your pardon.

"Q. State if those shipments were shipments from the points shown on those bills of lading, and state to whom the shipments were consigned and who they were consigned to.

"Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial and not the best evidence.

"The Court: Not the best evidence why?

"Mr. Diggs: To ask him what they state.

"The Court: Here is the way it looks to me—the way to get that in.

"The Court: What do you want to do now?

"Mr. Payne: I offer these in evidence. Strike that out.

"Q. State if you shipped the cars referred to in those bills of lading?



"Mr. Diggs To which we object as incompetent, irrelevant and immaterial, and calls for a conclusion of the witness.

"Q. Do you know what was loaded in those cars?

"A. Yes, sir.

"The Court: Now I will let you prove and describe what was in them, the kind of commodity it was.

"Q. Mr. Anderson, describe what was in the cars?

"A. It was blended gasoline.

"Mr. Diggs: Hold on—to which we object as incompetent, irrelevant and immaterial, hearsay, and this witness has no authority to constitute evidence against this defendant.

"The Court: I will instruct the jury that this evidence will not be considered as any evidence proving as to the name of this material. It will only be introduced for the purpose of showing these shipments, so that if afterwards you find from the evidence submitted to you that what was shipped was not in fact under the rules of law was not in fact unrefined naphtha but was gasoline, that then that lays a predicate on the question of discrimination, but it is not to be considered as any evidence on the issue as to whether or not the commodity that was shipped under these indictments was gasoline.

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"Mr. Diggs: Note my exceptions to the ruling of the court.

"By the Court: Describe what that commodity was described in that bill of lading. What it is, where it came from and what it was from and then I will let you go further, probably. You know how to answer that.

"By Mr. Diggs: Was that a question to the witness?

"By the Court: You have your exceptions.

"By Mr. Diggs: Not to that question.

"By the Court: You may have your exception to it on the same grounds named in the other.

"A. It was gasoline blended with naphtha of 72 gravity, 72 to 71 gravity.

"By the Court: What was it made from, that is the question.

"A. It was made from casinghead gas—natural gas.

"By the Court: How?

"A. By compression system.

"By the Court: Had you done anything else to it in any other way?

"A. No, sir.

"By the Court: Now you may go ahead.

"Q. State how that shipment of that product that you have described was billed?

"By the Court: Did you ship any of it anywhere, ship any of it to Port Arthur?

"A. Yes, sir.

"By the Court: From Jenks?

"A. Yes, sir.

"The Court: Now go ahead.

"Q. State how the shipments were described.

"The Court: Now, have you got the bill of lading of that shipment?

"Mr. Payne: These are the bills of lading?

"The Court: Is that the bill of lading?

"A. Yes, sir.

"The Court: Now, identify it.

"Q. Do you identify that as being in your own handwriting? A. Yes, sir.

"Mr. Payne: We offer these in evidence.

"Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not being a purported bill of lading, but an instrument made in the handwriting of the witness, not of the railroad company nor its agent.

"By the Court: Let me see it.

"Mr. Diggs: And the evidence of the witness shows—on the further ground the evidence of the witness shows the material shipped was not gasoline but casinghead gasoline.

"The Court: Who is George Anderson, is that your name?

"A. Yes, sir.

"The Court: Now this is not a bill of lading, this is a shipping order.

"A. That is what we use for a bill of lading?

"The Court: Who gave you these?

"A. My company.

"Q. Is that your order to the railroad company to transport these cars? A. Yes, sir.

"The Court: Well that is what is known as a shipping order.

"Mr. Payne. They don't distinguish it, your honor. They call them duplicate originals. I offer these in evidence.

"The Court: Well, let them make their objection.

"Mr. Diggs: We object as being incompetent, irrelevant and immaterial, and hearsay as to this defendant; on the further ground that the cars described here are not shown to have been received by the railroad mentioned, or to be gasoline or to have been transported in interstate commerce.

"Mr. Payne: Your honor, this is the beginning, we will follow that up.

"The Court: Very well, let them be introduced in evidence, and let the record show it as read.

\* \* \* \* \*

"Q. Mr. Anderson, I understood you once in your direct examination to say the substance in these cars, in answer to Mr. Payne's question, was blended; I understood you to say in answer to a question by the court that they consisted alone of the product of your compression plant. What is the fact in that regard?

"A. Sometimes we did ship straight run stuff and other times we shipped blended stuff, that is, blended with naphtha.

"Q. Was the substance in these cars blended or unblended?

"A. That was blended—well, one of them I couldn't say, the liquefied, I suppose, was straight run stuff.

"Q. You suppose that the car in the shipping order described as liquefied petroleum gas was the native product of your compression plant, but the other one is blended. Do you know the proportions of the blend?

"A. No, sir, not exactly. We had to regulate that according to the gravity of the gasoline." (S. M., pp. 294-306, 314, 314A.)

XVII. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 24 and 25, and admitting the testimony of the witness McCarroll, respecting the practice of Crosby & Gillespie, for the same reasons stated with

respect to the evidence of the witness Anderson last mentioned; said testimony being as follows:

"Q. State your full name, Mr. McCarroll?

"A. Charles B. McCarroll.

"Q. Where do you live? A. Kiefer.

"Q. What is your business?

"A. Assistant Superintendent for Crosbie and Gillespie.

"Q. What sort of business is Crosbie and Gillespie in? A. Well, compression gasoline plant.

"Q. A compression gasoline plant? A. Yes, sir.

"Q. State as briefly as you can what your processes of manufacture are beginning with the gas?

"By Mr. Diggs: To which we object as incompetent, irrelevant and immaterial and hearsay evidence as to this defendant; it cannot be bound by the act or proceedings of others.

"By the Court: What is the object of this evidence?

"By Mr. Payne: There are five discriminate counts from Jenks and five from Kiefer.

"By the Court: Their plant at Kiefer?

"By Mr. Payne: Yes, sir.

"By the Court: The objection is overruled.

"By Mr. Diggs: We save our exceptions.

"Q. Describe briefly your process of manufacture first beginning with the well?

"By the Court: Get your shipping order.

"By Mr. Payne: This witness did not make out the shipping orders, we have another witness for that.

"By the Court: Let him stand aside and get that witness in here. Let's have some systematic process.

"By Mr. Payne: I first thought I would show it was produced and then it was shipped.

"By the Court: Go ahead.

"Q. Go ahead McCarroll?

"A. It was taken out of the well through a vacuum process, delivered to the plant and we put it through two stages, low stage and high stage, take the gasoline out and we blend into naphtha take about a third blended to certain gravity, deliver into tank cars and we are through with it.

"By the Court: You get the casinghead gas from the well, and pipe it to your plant?"

"A. Yes, sir.

"The Court: And then you carry it through the compression process?"

"A. Yes, sir.

"By the Court: Then blend that product with the naphtha.

"A. Yes, sir.

"By the Court: Go ahead.

"Q. During the period from January 1, 1918, to June 1, 1918, did you manufacture some compression gasoline from the Texas Company?"

"By Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial, not binding upon this defendant.

"By the Court: Overruled.

"By Mr. Diggs: Exception.

"By the Court: It looks to me like you could shorten this if you asked if he shipped any of this product to the Texas Company.

"By Mr. Payne: Your honor I want to show he sold it to the Texas Company at Kiefer and the Texas Company shipped it.

"By the Court: Very well.

"A. You want me to give the amount?"

"Q. No, just state whether you shipped anything during that period? A. Yes, sir.

"Q. Whether you manufactured some compression gasoline for the Texas gasoline during that period and sold it to the Texas Company? A. Yes, sir.

"Q. Do you recall the terms?"

"By the Court: Let me find out about that. Where did you deliver it to the Texas Company?"

"A. On the tank car on our siding.

"Q. On your siding at Kiefer? A. Yes, sir.

"By the Court: What is the allegation in your indictment?"

"By Mr. Payne: The allegation is as I remember the Texas Company as consignor and the Texas Company as consignee shipped from Kiefer to Port Arthur, that they were actually shipped by the Texas Company.

"By the Court: Let's see what is states. We

are losing lots of time, you ought to know what the necessary allegations in the indictment are. Just read it to him—read what the allegation is—just let me have it.

“Q. That throughout the last mentioned period the Texas Company (beginning at page 5 your honor).

“By the Court: Go ahead.

“Q. And under your contract you delivered it to the Texas Company in the cars at Kiefer, that correct?

“A. Yes, sir.

“By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial and not binding on this defendant and the contract that this witness had with the Texas Company being the best evidence of the contract.

“By the Court: Well I will strike out everything about the contract. I will let him prove this commodity was the kind and description that he delivered certain cars to the Texas Company.

“By Mr. Payne: At Kiefer?

“By the Court: Yes, at Kiefer.

“Q. McCarroll, you stated that this casinghead gasoline was blended with naphtha, was it not?

“The Court: How many cars of that kind?

“A. In that length of time?

“The Court: During that period.

“A. I couldn't answer that just exactly. We delivered about forty-five to fifty a month.

• • • • •

“Q. Where did you get the naphtha with which you blended these shipments, that was delivered to the Texas Company at Kiefer?

“Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, and not binding on this defendant.

“The Court: Objection overruled and exception saved.

“Mr. Diggs: We save our exceptions.

“A. From the Texas Company at West Tulsa.

“Q. Where? A. West Tulsa.” (S. M., pp. 316-320.)

“Q. I show you two papers marked Government's exhibits 24 and 25 and will ask you if you identify these documents as made out by you?

"A. They were made out according to my instructions.

"Q. Under your supervision?

"A. Yes, sir, I could not say I made them out personally.

"Q. State what the papers are, please, sir.

"A. They cover shipments—

"By Mr. Diggs: We object incompetent, irrelevant and immaterial and not the best evidence.

"By the Court: I overrule the objection.

"By Mr. Diggs: I except.

"By the Court: State what they are but not the contents.

"A. Shipping orders of bills of lading covering movement of cars from Kiefer, Oklahoma, to Port Arthur, Texas.

"By the Court: They are the best evidence as to what they are.

"By Mr. Payne: I offer these in evidence.

"By Mr. Diggs: We object, incompetent, irrelevant and immaterial, no connection of the defendants being shown this being transaction with different parties with whom the plaintiff has not shown to have any connection and undertaking to bind it by acts of third parties.

"By the Court: The objection is overruled.

\* \* \* \* \*

"Q. Do you know that during the period from January 1, 1918, to June 30, 1918, that the Texas Company bought from Crosbie and Gillespie at Kiefer all of the output from their plant at Kiefer? A. I do.

"Mr. Diggs: To which we object as being incompetent, irrelevant and immaterial and a transaction between third parties with whom this defendant is not connected or identified.

"The Court: That is admitted only for the identification of these cars.

"Mr. Payne: That is all.

"Mr. Diggs: That is all.

"Witness excused.

"The Court: I will let you recall Mr. McCarroll. I will let you ask that question. I was under the impression that the evidence showed. But I will let you ask the question if all the cars loaded, wheth-



er or not it was the product blended with the naphtha. You may recall him and ask him that.

"Whereupon CHARLES MCCARBOLL was recalled for further direct examination by the Government:

"Mr. Payne: I did not catch the significance of your honor's statement.

"The Court: I remember the question I asked him, if all the product described made by that plant was turned over to the Texas Company and he said yes, but he described the product, casinghead gas extracted by compression and he described the blended article so there might be some confusion, so now you can repeat the question that I did not permit you to ask him.

*Examination by Mr. Payne.*

"Q. Are you the same Charles McCarroll who testified a few moments ago? A. Yes, sir.

"Q. Did you receive from the Texas Company at Kiefer cars of naphtha shipped to Kiefer from the Texas Company at West Tulsa? A. Yes, sir.

"Q. And what did you do with that naphtha?

"Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial.

"The Court: Objection is overruled.

"Mr. Diggs: I except.

"A. I used it to blend with.

"Q. In what proportion did you blend the casinghead gasoline?

"A. About a third, used about one-third naphtha, different—

"Q. Do you know what the specifications for the product you sold to the Texas Company were?

"A. I cannot answer it." (S. M. pp. 326, 327, 329-331.)

XVIII. In admitting the testimony of the witness, Haigh, respecting the practice of the Ajax Gasoline Company concerning its shipments, for the reasons stated secondly above respecting the practice of the Totem Gasoline Company; said testimony being as follows:

"Q. What is the name of the casinghead gasoline plant of which you are superintendent?

"A. The Ajax Gasoline plant.

"Q. Located at Jenks? A. Yes, sir.

"Q. How long have you been connected with that institution?

"A. I have been superintendent for about twenty months.

"Q. You have been superintendent for about twenty months and how long have you been with that institution?

"A. Little over three years.

"Q. Have you been with any other casinghead gasoline plant prior to that time? A. No, sir.

"Q. What were your duties and position when you first went with the Ajax? A. Chief engineer.

"Q. Did that have anything to do with the manufacture of the product from casinghead gasoline plants?

"A. Yes, sir.

"Q. Well it was merely the mechanical work of running your engine, was it or did you have something else to do with the manufacturing of the materials?

"A. I had charge of the plant operation entirely.

"Q. You had charge entirely of the operation or cars? A. No, the entire operation of the plant.

"Q. Are you familiar with the methods used in compression plants—is yours a compression plant?

"A. Yes, sir.

"Q. Are you familiar with the method by which the product is manufactured and produced at the casinghead plant? A. Yes, sir.

"Q. What is the name of the commodity which you produce? A. Gasoline.

"By Mr. Diggs: If the court please we move to exclude the answer of the witness on the ground it is not shown he possesses this expert knowledge necessary to state the name and character of the article produced.

"By Mr. Chambers: I cannot conceive of a more competent man to determine the product than the man who produces himself and has familiarized himself with the product and made it before it is produced as an expert, I mean.

"By Mr. Diggs: In order to save time and save my record on this character of evidence of witnesses on this subject if it may be agreed the defendant has the right to strike it out after the close of the Government's case if it is not relevant and material I will wait until then and save a whole lot of time in putting in exceptions to the different questions.

"By the Court: Very well.

"Q. How long have you been producing this material from the compression plant, Mr. Haigh?

"A. Ever since the plant was built three years ago.

"Q. Did you ship your product from the casinghead plant? A. Yes, sir.

"Q. And prior to the shipping of the commodity——

"By the Court: Let me see, just wait. What sort of a plant is that, a compression?

"A. A compression plant, casinghead.

"By the Court: Casinghead gas?

"A. Yes, sir.

"By the Court: And you get that from the gas pumped from the wells?

"A. Gas comes off the oil wells.

"By the Court: And then you compress it?

"A. Yes, sir.

"By the Court: And what do you say now when you compress it, what do you call it, what do you call the commodity after it is compressed.

"A. Gasoline after it condensed.

"By the Court: What do you mean by condensed?

"A. Run through a set of cooling coils and condensed into a liquid form.

"By the Court: Q. That is a part of the process of compression?

"Mr. Chambers: That is a part of the process they have all testified to.

"The Court: Well, I am asking him.

"Q. That is a process of compressing, the condensing of it? A. Yes, sir.

"Q. Then you say, after you get it through the compression, you call it gasoline? A. Yes, sir.

"Q. Suppose you were to combine one-third naptha and two-thirds of the commodity after it was compressed, what would you call it then? A. Gasoline.

"Q. Just the same name you would before?

"A. Yes, sir.

\* \* \* \* \*

"Q. Now, do you produce, prior to shipping the gasoline, which you take from the compressor plant, do you prepare that for shipment in any other way excepting by blending? A. No, sir, not at our plant.

"Q. You don't weather it at your plant?

"A. No, sir, it is not necessary.

"Q. Now, how many gasoline plants are there at Jenks of this character? A. I don't know.

"Q. Well, you know some of the plants there, don't you? A. Yes, sir.

"Q. Well, can you name some of them? A. Yes, sir.

"Q. I wish that you would give all that you know of and that you remember.

"A. Well, there is the Totem, John Tell, Kelly, Swanson & Black; Texas Company; Tribes Gasoline Company and the Oklahoma Petroleum & Gasoline Company; Oil States Gasoline Company; Gypsy.

"Q. Would you say that Jenks is quite a place for the manufacture of this commodity in the manner in which you manufacture it?

"Mr. Swacker: I would like to object to that; not shown the witness is qualified; quite a place is a very indefinite term.

"The Court: How many casinghead plants are there?

"A. I don't know.

"The Court: Well, about how many, as many as ten?

"A. I think so.

"The Court: Well, you know whether there is ten or not don't you?

"Mr. Chambers: Give your best judgment.

"A. Yes, my judgment is that there is at least ten.

"Q. Now, then, these plants that manufacture this commodity that you call gasoline, do they manufacture that by the compression method? A. Yes, sir.

"Q. Are you familiar—you are familiar with the manner in which various plants manufacture their gasoline? A. No, sir.

"The Court: How many plants are you familiar with, as to how they manufacture?

"A. I am familiar with all that our own company owns.

"The Court: How many do they own?

"A. Five.

"Mr. Chambers: This is going to be a leading question, and don't answer it.

"Q. You have tried to inform yourself with the manner in which the other plants operate, haven't you, and the character of the plant, as to whether they manufacture this gasoline by compression the same as you do?

"A. Yes, sir.

"Q. And you have informed yourself with reference to that matter, haven't you?

"A. I know that all of them operate on the compression system there.

"Q. Well, the compression system, they may use different machineries, but the system and the plant and the method is exactly the same, and has to be, don't it?

"A. Not necessarily.

"Q. I mean in the compression plant.

"The Court: In principle?

"A. In principle, it is the same.

"Q. In principle, the compression plant of all of them is the same? It is the same method of getting out the gasoline from the casinghead gas, ain't it? A. Yes, sir.

"Q. Now, then, you ship your commodities, you say, after you blend it? A. Yes, sir.

"Q. I will ask you to state, how long have you been shipping it? A. Billing it, you mean?

"Q. Yes, billing it out. A. Since August, 1918.

"Q. And I will ask you to state the designated name by which you bill out your commodity?

"Mr. Diggs: I suppose this would still fall under that objection—

"The Court: Yes.

"A. We bill it as liquefied petroleum gas.

"Q. As liquefied petroleum gas. Under what condition?

"Mr. Diggs: Now, we move to exclude the statement of facts contained in that and immaterial under the issues in this case.

"The Court: Yes. I don't think that is competent.

"Mr. Chambers: You mean as to the manner in which he bills it out?

"The Court: How could that affect it?

• • • • •

"The Court: Go ahead. I will let it in subject to be moved to be stricken out.

"Q. How did you bill your commodity?

"A. Liquefied petroleum gas.

"Q. Was it billed as liquefied petroleum gas where the pressure was below the ten pounds vapor pressure?

"A. No, sir.

"Q. When you blend the commodity that you get

from your plant with the naptha, that is what you blend it with, ain't it? A. Yes, sir.

"Q. When you blend it with that, doesn't it bring it down below the ten pound vapor pressure? A. No, sir.

"Q. Well, it does occasionally bring it down?

"Mr. Diggs: Your honor, I think counsel should be required to keep within the rule and not suggest the very answer.

"The Court: Yes, I think that. Don't lead the witness.

"Q. What is the effect of blending your gasoline that you take out of your compression pipe with the naptha, with reference to the vapor tension? A. It lowers it.

"Q. Is it your purpose—or, what is your purpose with reference to blending it? That is, as to whether or making it subject to be shipped?

"A. Yes, sir, simply for market.

"Q. Putting it upon the market? A. Yes sir.

"Q. Now, if it is above the ten pound vapor pressure, you designate it in your shipping order liquefied petroleum gas? Do you ever ship any where the vapor pressure is less than ten pounds?

"A. We have. We haven't any at present.

"Q. And how did you designate that?

"A. Gasoline.

"Q. For what reason did you designate this commodity liquefied petroleum gas when you shipped it and it was above the ten pound vapor pressure?

"A. By order of the Bureau of Explosives.

"Mr. Chambers: That is all.

*"Cross Examination by Mr. Diggs.*

"Q. Did you say your name was Haigh? A. Yes, sir.

"Q. Mr. Haigh, is it a part of your business, as superintendent of the plants you have named, to attend to the shipping of your product? A. Yes, sir.

"Q. In shipping that product, it is your purpose to bill and describe it by the name which you consider it should be billed under the tariffs established by the Interstate Commerce Commission, is it?

"A. I bill as ordered by our sales office.

"Q. What?

"A. I bill as I am ordered to by our sales office.

"Q. Then, if you bill it as ordered by your sales office, you don't bill this product because you consider it to be gasoline or liquefied petroleum gas, but because you receive orders from your superiors so to bill it?

"A. Primarily, yes, sir.

"Q. You say that you know this product to be gasoline and can you tell me the constituent elements of the product known on the market generally as gasoline?

"A. No, sir.

"Q. Can you tell me the constituent elements of the product you produce from your plant which you say is gasoline? A. No, sir.

"Q. Can you tell me the particulars in which the product produced by you resembles or has in common with the article 'generally purchased on the market as gasoline'?

"A. It has practically the same burning and explosive qualities, the gravity and vapor tensions are the same as the other articles.

"Q. The products produced by you you think has the same gravity as the gasoline you buy on the market do you? A. After it is blended.

"Q. After it is blended. How much do you blend?

"A. 56 to 58.

"Q. Now as a matter of fact before you blend this article you call it raw gasoline don't you? A. Yes, sir.

"Q. After you blend it you call it naphtha blend, don't you?

"A. We have always designated it as gasoline.

"Q. You have always designated it in your plants as gasoline. And the product that you shipped as liquefied petroleum gas is the same article you call gasoline except one has a blend in it and the other has not. Is that true?

"A. I can't say.

"Q. You can't say. I understood you to say you had charge of the shipping. A. Yes, sir.

"Q. And it is your duty also to see to the production of this article? A. Yes, sir.

"Q. And how it gets on the market. In that connection are you familiar with the rules provided by the Corporation Commission as to how the product produced by your plant shall be sold and when it shall be called and treated as gasoline and when and how it shall be called and considered unrefined naphtha?

\* \* \* \* \*

"Q. Mr. Haigh, what is the gravity of the raw casinghead gasoline produced by you?

"A. It varies from 80 to 84.

"Q. Varies from 80 to 84. To what gravity do you reduce it before shipping? A. Above 56 and below 58.



"Q. When your raw casinghead gasoline is produced and the gravity is between 80 and 84, did you say?

"A. Yes, sir.

"Q. Between 80 and 84, is that commodity in shape to be generally used in the market as gasoline? A. No, sir.

"Q. It is not. All the part of your gasoline that you ship and sell in Kansas City is shipped to refineries, is it?

"A. No, sir.

"Q. It is not. All the raw that you ship is shipped to refineries? A. It has been in the past.

"Q. I say, all you have shipped was shipped to refineries? A. Yes, sir.

• • • • •

"Q. Was there a rate on unrefined naphtha between the shipping point to which you shipped your blended gasoline from and to the points to which they were shipped?

"A. I do not know.

"Q. On unrefined naphtha?

"The Court: He said he did not know.

"A. I don't know.

• • • • •

"Q. And your only purpose in designating, you only designated the name under which this product is shipped in the bills of lading by the direction of your superior?

"A. Yes, sir.

• • • • •

"By the Court: Mr. Haigh what did you say was the gravity of raw casinghead gasoline after you had blended it for shipping?

"A. Between 56 and 58.

"Q. When you had reduced that raw casinghead gasoline as you call it to 56 or 58 gravity the article you would ship north then would only have from five to ten per cent or a little more than that of casinghead gasoline in it wouldn't it? A. It would be more than that.

"Q. You think so? A. I know that.

"By Mr. Diggs: Alright.

• • • • •

"Q. Mr. Haigh after you have produced your raw gas with gasoline by blending to 56 to 58 gravity how much of your original raw casinghead gasoline is in that mixture so prepared? A. About twenty-five per cent.

"Q. How much of that original casinghead gasoline would be in there at the time it got to market?

"A. I don't understand the question.

"Q. Can you state how much at the time this blended product gets to market are you able to state approximately, what at the time you ship it, are you able to state approximately how much of the original casinghead gasoline would be in it in your judgment?

"A. About twenty-five per cent at the time we ship it; I don't know about the arrival.

"Q. 25 per cent at the time you ship it. Alright that is all.

\* \* \* \* \*

"By the Court: What proportion do you use in blending?

"A. Well it varies to seventy-five per cent naphtha to reduce it to that gravity.

"By the Court: You would have about two of naphtha and one of casinghead gasoline?

"A. Nearly three to one." (S. M., pp. 413-420, 424-427, 430, 433-436.)

XIX. In admitting the testimony of the witness League in substance, that the commodity shipped by the Gypsy Oil Company from Kiefer before December 2, 1916, in the opinion of the witness, was of the same character as that shipped after said date; for the reason that it violated the *res inter alios acta* rule, and further that said witness was not qualified to give opinion evidence.

Said testimony being as follows:

"Q. Prior to December 2, 1916, did he use any other term except casinghead gasoline?

"A. Not that I ever heard.

"Q. Did Mr. Millard? A. That is all I ever heard.

"Q. Did Mr. Millard use the term casinghead gasoline prior to December 2, 1916, in his own conversations with you? A. Yes, sir.

"Q. Did he use any other terms? A. No, sir.

"Q. After December 2, 1916, did you examine the commodities that they had down there? A. Yes, sir.

"Q. Can you tell whether it was the same commodity you examined prior to December 2, 1916?

"By Mr. Swacker: Now I merely wish to object to that as being incompetent, irrelevant and immaterial on the same basis we made objection to all of that matter, outside the period of time when there was an unrefined naphtha rate in effect on the grounds

it violates the res inter alios acta rule. Just save an exception.

"By the Court: Now what time did you ask him about?

"A. I am asking him now if he had a conversation with Mr. Millard with reference to the designated name of the commodity prior to December 2, 1916, as to what it was. He said it was gasoline. Now I asked him if he called it any other name.

"By Mr. Swacker: He said casinghead gasoline.

"By the Court: I don't think he can prove conversation with Mr. Millard. I will allow you to prove the conduct of the business what they shipped and what they did. Now to prove what some man says unless he is the agent of this company I don't think you can do that.

"By Mr. Chambers: He was the superintendent.

"By the Court: Not of the Gulf Refining Company. The Gypsy is not on trial.

"By Mr. Chambers: I understood we had that connected up.

"By the Court: I don't so understand.

"By Mr. Chambers: Then that will necessitate recalling this witness.

"By Mr. Diggs: I don't like to interrupt the gentlemen but it appears in this record already that this so called casinghead gasoline was always shipped under the name of gasoline prior to—

"By the Court: They want to prove prior to that the officers Mr. Millard, the manager and superintendent stated that. I won't allow them to do that unless they show that the Gypsy was the agent of the Gulf. Now the act, that is a fact, the action of the company what they did, that is a fact.

"By Mr. Chambers: I think we have been misled. I think I have misstated it and I think—the question I asked was as to whether or not the material he investigated afterwards was of the same character of material he investigated prior to December 2, 1916. That was the question I believe.

"Q. In your opinion, was the commodity that you testified you investigated after December 2, 1916, the same commodity, the same character and same commodity investigated prior to that time? A. Yes, sir.

"The Court: I will let him prove that, but not what the officer said.

"Mr. Swacker: I make the same objection. It is irrelevant, incompetent and immaterial." (S. M., pp. 444 447.)

XX. In admitting the testimony of the witness League concerning the practice followed by Chestnut & Smith; said testimony being as follows:

"Q. Now, what other plant, tank cars of some other companies did you inspect?

"The Court: Any other plant, you testified about the plant at Kiefer, of the Gypsy Oil Company plant. Any other plant?

"A. Yes, sir. The Chestnut and Smith.

"Mr. Chambers: Have they been—

"The Court: No, sir, nothing said about it.

"Q. Did you investigate it there, those cars?

"A. Yes, sir.

"Q. Is that the same character of compression plants, same method of making casinghead gasoline that the Gypsy Company has? A. Yes, sir.

"Q. Was that a blended material? A. Yes, sir.

"Q. Do you know how that was shipped? A. Yes, sir.

"Mr. Swacker: Just a minute.

"Q. I will ask you to state what was the designated term under which that was shipped? Don't answer the question.

"Mr. Swacker: We desire to make an objection.

"The Court: You proved it was a blended material. What do you mean by a blended material?

"A. Raw casinghead gasoline blended with some other petroleum product.

"By the Court: Do you mean naphtha?

"A. Yes, sir, that is one of them.

"By the Court: I think that is too indefinite.

"Q. Do you know whether this company blended their casinghead gasoline with naphtha or not? A. Yes, sir.

"Q. Did they blend it with naphtha? A. Yes, sir.

"By the Court: Well now if he knows how they shipped that which was blended with naphtha, I will permit him to state the practice of shipping that.

"Q. Answer the question.

"By Mr. Swacker: Now we object as being incompetent, irrelevant and immaterial. In the first place the circumstances not being shown to be similar or identical to admit evidence with regard to that.

"By the Court: Wherein are they not similar. I am confining the question to the blended material where it is from the combination of the product resulting from a compression of the casinghead gas with the naphtha.

"By Mr. Diggs: If the court please if you will permit us to state our objection then we will take up the question of the court wherein the similarity exists.

"By Mr. Swacker: I will take that question up for a moment. The similarity or lack of dissimilarity is insufficiently shown in this respect. This witness does not know nor has he attempted to state the quality of material or degrees of blending or quantities used in blending, whether the result in blending is anything like the same stuff shipped by the Gypsy and in the second place he is not attempting to confine it to points where there were unrefined naphtha rates in effect.

"By the Court: I will overrule you on that point. What then, what about the question of naphtha blended with the raw—what you call the raw casinghead gasoline if you know how that effect just what the product was?

"A. If I knew the quantity of naphtha in each blend.

"By the Court: What would the quantity of naphtha in each blend would that depend on the character of what the blended article was?

"By Mr. Swacker: Would that determine what the blended article was?

"By Mr. Chambers: That is for shipping purposes.

"By the Court: Well what the commercial name would be.

"A. That would not affect the name.

"By the Court: That would not affect the commercial name?

"A. No, sir.

"By Mr. Swacker: Now I object to his answer on that as part of the evidence offered on the ground that he has not been qualified as to what were the commercial names of this product.

"By the Court: I should think he should know, he is a man that it is an inspector.

"By Mr. Swacker: Well, he doesn't inspect for the purpose of sale. He inspects for the physical characteristics.

"By the Court: Now when you make your inspection and make your report do you designate the name of the product that is in there that you inspect?

"A. Yes, sir.

"By the Court: Where do you get that name from?

"A. We know that that is a gasoline plant before we go there, they make nothing else.

"By the Court: Here is the point I want to know; is whether or not you solely make the designation of the name from your information or whether you get that from the different plants you talk to around or the trade, how do you determine the name you will give the product you have inspected.

"A. I use the name that is known generally.

"By the Court: How do you ascertain the name that is known generally, for instance they, you go down there and you find this commodity. Here is raw casinghead gasoline, gasoline which has compressed and you find some naphtha in there. Where do you get the information by which you designate the name that you are going to mark that car; how do you get the information to designate the name of that car?

"A. By the name it is known by among the men around the plant, for instance, or among shippers of that commodity.

"By the Court: How long have you been at this business?

"A. Since March 1, 1916.

"By the Court: What was your business prior to that?

"A. Assistant train master, P. & P. U. Railroad Company.

"By the Court: I believe I will let him answer the question, state your exceptions.

"By Mr. Green: May I make one suggestion to the court? We take the position that it is immaterial first, even though it might be known as gasoline generally yet if the court determines from the evidence we introduce here that it is further refined at Port

XXI. In admitting the testimony of the witness League respecting the practice of D. W. Franchot; said testimony being as follows:

"Q. Now do you know D. W. Franchot? A. Yes, sir.

"Q. Are they are Kiefer? A. Yes, sir.

"Q. What do they do?

"A. Make casinghead gasoline.

"Q. And do they blend and ship it? A. Yes, sir.

"Q. And have you up to the time during the time that you have been inspector in Oklahoma, have you examined and inspected those tank cars? A. Yes, sir.

"Q. Have you examined and inspected the blended, where they blended with naphtha? A. Yes, sir.

"Q. Where the naphtha is blended with casinghead gasoline? A. Yes, sir.

"Q. And how do they ship their product? As gasoline? A. Yes, sir.

"By Mr. Swacker: Same objection and exception.

"By the Court: Same objection and exception."  
(S.M. pp. 470, 471.)

XXII. In admitting the testimony of the witness League respecting the practice of D. W. Franchot; said testimony being as follows:

"Q. Now let me ask you did these people ship this product as gasoline after December 2, 1916?

"By Mr. Diggs: To which we object, incompetent, irrelevant and immaterial, the transaction being between third persons, and having no connection with the Gulf Refining Company and not shown to have been brought to the knowledge of the Gulf Refining Company and not being the best evidence of how they shipped and under what condition it was shipped.

"By the Court: Well now if you are going to go on that of course that will force them to send down there and get their railroad records. Now you have your point on the law. That allows you your exception. I will sustain the objection and require them to send after them.

"By Mr. Diggs: If the court please I am not putting the words 'the best' in there, strike out the word best and I will say hearsay.

"By the Court: Very well.



"Q. Now after December 2, 1916, you inspected that plant? A. Yes, sir.

"Q. Of the Franchot? A. Yes, sir.

"Q. And were they shipping this commodity as gasoline after December 2, 1916?

"A. They billed it that way, yes, sir.

"Q. That is what I mean? They billed it as gasoline?

"A. Yes, sir.

"By Mr. Diggs: Same objection and exception." (S. M., pp. 471, 471-A.)

XXIII. In admitting the testimony of the witness League respecting the practice of the Ajax, Tribes and Eagle plants; said testimony being as follows:

"Q You have examined the Ajax, Tribes and Eagle?

"A. Yes, sir.

"Q. Now, as to the Tribes Gasoline Company, did you make any inspection *if* it—of the manner in which it makes its commodity?

"Mr. Swacker: We will make this admission as to any of the plants that the witness may name that you contend that that is a fact, that the witness, if you ask him those questions, will testify the same, and that subject to our objection and exception.

\* \* \* \* \*

"Mr. Swacker: Have you been there and inspected them?

"A. All but the Giltland.

"Mr. Swacker: And you have inspected them likewise under the same circumstances?

"A. Yes, sir.

"Q. And during the time prior to December 2nd and after December 2nd, 1916, up to May 2nd, 1919, as far as the inspection—— A. Yes, sir.

"Mr. Swacker: We admit the testimony would be the same with reference to this as to the other, with the same objections.

"The Court: All right

"Mr. Green: I would like to get the court to instruct the stenographer to make the memorandum that all of the objections that were granted, reserved by the defendant to the first plant about which he testified, applied to all of these others, all of the exceptions.

"The Court: All objections and exceptions ap-

ply to every one except that it was not the best evidence.

"Mr. Green: Yes, sir." (S. M., pp. 472, 474.)

XXIV. In admitting the testimony of the witness League respecting practices of other shippers; said testimony being as follows:

"Q. Referring to the different blends of casinghead gasoline with naphtha and kerosene and other blends when it is blended with naphtha how is it usually shipped on the billing by the shipper? A. Gasoline.

"By Mr. Swacker: I objection, incompetent, irrelevant and immaterial.

"By the Court: Overruled.

"By Mr. Swacker: I except.

"Q. When it is blended with kerosene how is it usually shipped?

"By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

"By the Court: Overruled.

"By Mr. Swacker: I except.

"A. Gasoline.

"Q. When it is blended with crude oil how is it usually shipped? A. Gasoline." (S. M., p. 512.)

XXV. In admitting the testimony of the witness League respecting what he had not seen done by other shippers; said testimony being as follows:

"Q. Have you seen the bill or shipping orders describing the shipment consisting of the blend of casinghead gasoline and naphtha to any other refinery as unrefined naphtha?

"Mr. Swacker: I object as incompetent, irrelevant and immaterial and not being shown that the tariff or classifications permitted such shipment.

"The Court: Objection overruled.

"Mr. Swacker: I except.

"A. No, sir." (S. M., pp. 515, 516.)

XXVI. In admitting the testimony of the witness League concerning the meaning of the term "raw casinghead gasoline"; said testimony being as follows:

"Q. When you spoke of raw casinghead gasoline, just what did you mean? A. Unblended.

"Q. Did you mean to intimate, by calling it raw casinghead gasoline that it was in a crude or unrefined state?

"A. No, sir.

"Mr. Swacker: I object to that as incompetent, irrelevant and immaterial. He stated the source of his knowledge of the names as one in use among the people.

"The Court: I will overrule the objection. You may have an exception.

"Mr. Swacker: I object, on the further ground, that the witness is not shown to be qualified to express any opinion as to whether anything is refined or unrefined.

"The Court: I will let him answer.

"Mr. Swacker: Exception." (S. M., pp. 516-518.)

XXVII. In admitting the testimony of the witness Scott respecting practices of other shippers; said testimony being as follows:

"By the Court: Now in this business have you been brought into contact so as to know the terms they use when they sell this commodity and the names they call it by?

"A. Only the names under which they ship it.

"Q. Now then in these various places that you have stated to the court in all of these places they ship casinghead gasoline blended with naphtha?

"A. Naphtha and kerosene.

"Q. Naphtha and kerosene? A. Yes, sir.

\* \* \* \* \*

"Q. Does the performance of your duties bring you into contact with the people that manufacture casinghead gasoline? A. Yes, sir.

"Q. Do you have occasion to go through their plants and see the methods by which they manufacture these products? A. Yes, sir.

"Q. Do you talk with them with reference to what is the name of the product which they manufacture.

"A. Yes, sir.

"Q. I will ask you to state what is the designated term by which they refer to this particular commodity and these various blends.

"By Mr. Swacker: I object, irrelevant and immaterial and there is no connection shown in what respect they refer to it. If they are referring to it in connection with his functions that of course is limited to the safe transportation regulations.

"By the Court: In what way would you be talking to them?

"A. When they give it a name and call it?

"By the Court: Yes.

"A. I am required to find out the pressure they use as to low and high stage, whether it is blended or unblended, whether it is steamed, temperature of the steam, whether the plant provided with appliances, storage facilities, storage capacity, and—

"By the Court: And it is in that capacity you come in contact with them and talk with them?

"A. Yes, sir.

"By the Court: I will let him testify.

"Q. Now what do they call it? A. Gasoline.

"Q. Was this the name they called it prior to December 2, 1916, and after December 2, 1916.

"By Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

"By the Court: Very well he may answer. It was the same product?

"A. Yes, sir." (S. M., pp. 532-534.)

XXVIII. In admitting the testimony of the witness Barnhart respecting the practice of his company; said testimony being as follows:

"Q. And do you ship the commodity that you manufacture and the casinghead gasoline before it is blended, or do you then blend it with other products?

"A. We don't blend.

"Mr. Diggs: To which we object, as incompetent, irrelevant and immaterial and hearsay, as against this defendant, and I don't want to keep making these objections. Subject to the motion to strike out.

"The Court: Yes, go ahead.

"Q. You say you don't blend it?

"A. I don't. I weather it.

"Q. You weather it? A. Yes, sir.

"Q. Do you ship it before you weather it? A. No.

"Q. You don't ship it where it is above the ten pound vapor? A. No.

"Q. You weather it? A. Yes, sir.

"Q. And then you ship it? A. Yes, sir.

\* \* \* \* \*

"Q. Now, how do you designate—what name do you ship it under when you ship it? A. Gasoline.

"Q. Do you sell it to the people up in Wisconsin?

"A. Yes, sir.

"Q. You sell it to them?

"A. Yes, sir; the company does; they give me orders.

"Q. And they sell it on orders from the company up there? A. Yes, sir.

"Q. And do you take the gravity of this commodity after it has been weathered? A. Yes, sir.

"Q. And what would you say was the general—generally speaking, what is the gravity?

"A. Well, anyways from seventy to seventy-five; it ain't all the same.

"Q. From seventy to seventy-five gravity?

"A. Yes, sir." (S. M., pp. 536, 537.)

"Q. Is the article you shipped to Wisconsin as gasoline there is there any other term or name under which you could ship it to the point you did ship it to of your own knowledge? A. There ain't any that I know of.

"Q. That is the only name you know of under which that particular product of the company can be shipped to the point you shipped? A. Yes, sir.

"By the Court: Did you ever investigate to see?

"A. Well no, I did not.

"By the Court: That is proving your negative without laying the foundation.

"By Mr. Diggs: I am proving more to show his knowledge bearing on his knowledge of the facts, that is all.

\* \* \* \* \*

"By the Court: Now as to the rates to these different points this expert can go out and make a memorandum of that and return into court and read it into the record showing the fact each side ought to agree to that. They are entitled to have it in here the way this rate is here to these points and then we can see if it is gasoline or unrefined naphtha and they should go on and say which it is and the expert ought to get it up and you ought to be able to agree to that.

"By Mr. Gann: There seems to be an impression in this trial the shipper cannot name the commodity any name except the name designated in the tariff and rules and it has always been the custom for the shipper to designate whatever commodity it is and the duty of the railroad company to apply that tariff to the commodity so designated.

"Mr. Swacker: Your honor has suggested to us that we would have to produce proof concerning the rate.

"The Court: Now, to my mind, a man who is not a rate man says he don't know. That wouldn't prove anything. They ought to allow this Interstate Commerce rate man to say what it is and put it in the record.

"Mr. Swacker: Our contention was that the only way it would have been competent evidence would be if they had laid a foundation by showing that there was a choice of rates. Your honor puts it up to us to show all the rates.

"The Court: You have your exceptions." (S. M., pp. 539-541.)

XXIX. In admitting the testimony of the witness Otey and the statement of Government's counsel respecting the contents of the document excluded by the court as inadmissible; said testimony being as follows:

"Q. Referring to an item on the second page of this exhibit, reading 'Painters naphtha, tank 838, car 2187, order number', will you state what that indicates?

"Mr. Swacker: Now, I would like to make an objection to this method of examination. The court has ruled that paper is not proper evidence, and the prosecuting officer is simply reading items from it, incorporating them into the question, which is exactly the same as if the paper was put in evidence.

"The Court: He can show him that and ask him what that means.

"Mr. Swacker: He is reading the contents of the paper into the record.

"The Court: I will permit him to do that.

"Mr. Swacker: Exception.

"Q. What does that order number there indicate to you?

"A. Why, no more than every tank car that naphtha had an order number." (S. M., pp. 549-550.)

XXX. In admitting the testimony of the witness Otey in substance, that certain cars contained painters' naphtha; said testimony being as follows:

"Q. Where did you get the order number shown on this sheet of April 11, order number 11348, showing painters naphtha as in cars 2187 and the three following?

"Mr. Swacker: I beg to object to that same statement over and over again, 'showing painters naphtha in' certain cars, and so forth.

"The Court: I will overrule the objection. You may have your exception. Go ahead.

"A. What is that again?

"Q. How do you know what the order number was?

"A. From the car slips." (S. M., p. 555.)

XXXI. In admitting the evidence while the witness Sanderson was on the stand respecting the practice of the Gypsy Oil Company before and after December 2, 1916; said evidence being as follows:

"Q. That is you know they were producing the casinghead gasoline at the plant, you know they were receiving a material from the South that they blended with that and you know they shipped that out?

"A. Yes, sir, that would be my memory of it.

"Q. And do you know where they shipped it?

"A. No, I could not say definitely, I did not look after that.

"Q. Do you know the designated term, the name under which they shipped it?

"By Mr. Swacker: We would just like to make the same objection we have made all along on that point as incompetent, irrelevant and immaterial.

"By the Court: Very well you may reserve the same right to strike out the evidence as the other.

"By Mr. Swacker: Exception.

(Question read by the Reporter.)

"A. As I remember it was gasoline.

"Q. Now this is in December, 1913, and you were there during the year 1914? A. 1914.

"Q. You were there during the year of 1915?

"A. Yes, sir.



"Q. And how much longer were you there?

"A. Kiefer?

"Q. Yes. A. To September, 1916.

"Q. To September, 1916? A. Yes, sir.

"Q. Do you know that this same process that you have explained was carried on by them during that entire period? A. Yes.

"Q. I mean by that, that the gasoline was produced there at the plant, that they received the material from the south, blended it with the material there, and then shipped it again to Port Arthur, and they called it gasoline? A. That was the general procedure, yes, sir.

"Mr. Swacker: Our objections and exceptions will apply to these last few questions, also?

"The Court: Yes.

"Mr. Chambers: That is all.

"The Court: Now, it seems to me that this is a duplication of what was admitted yesterday. I understood they admitted that was the practice before and afterwards. They saved their right to strike it out on the ground of being irrelevant and incompetent. That is an admitted fact. That is an admitted fact for the purpose of this case, subject to their objection and exception, on the ground of irrelevancy and incompetency.

"Mr. Chambers: Do I understand that these facts that this witness has testified to are admitted?

"The Court: They have admitted it by other witnesses, the same thing, it comes as an admitted fact for the purpose of this case.

"Mr. Chambers: The only reason this witness was put on was because, as I remember the testimony and the admission, I may be mistaken, they went from the month of May, 1916, up to the present time, and didn't go back of the month of May, 1916. And that was the purpose of putting on this witness, was to show that this transaction had continued during the entire period from the construction of the plant.

"Mr. Swacker: We make a further admission to cover all that. I don't think this particular point has been admitted. We make a complete statement of what we admit subject to our objection. We admit from the inception, in the inception, at the plant in 1913, up until about the end of 1914 or 1915, the practice was to ship naptha from Port Arthur to Kiefer, and there blended and shipped it, not back to Port

Arthur or Fort Worth, but shipped it to northern points, shipped it to market, shipped the blended to northern points to market, and described it as gasoline.

“Mr. Chambers: Also shipped it to Port Arthur?”

“Mr. Swacker: Not at that time, and if you have any grounds——

“Mr. Chambers: I took the testimony of this witness.

“Mr. Swacker: He said he could not speak with accuracy.

“The Court: What is your best recollection?”

“A. I would say we did ship some, that is my best recollection. However, it is a matter of record and could be very easily secured and I did not bill it out and did not know where it went.

“The Court: It is your best recollection some of that commodity was shipped to Port Arthur?”

“A. That is my best recollection.

“Mr. Swacker: I will not extend the admission to that, but continuing the admission from where I left off, that is, up to the year 1914, and the early part of 1915, the material was shipped to northern destinations, such as St. Paul and Minneapolis, and even Canada, and billed as gasoline; that beginning in the early part of 1915, shipments to northern markets described as gasoline, were discontinued altogether, with the exception of shipments to the Shady Side plant at Pittsburgh, which continued throughout the time up to the present, in fact, to be made and described as gasoline, and the balance of the material was all from hence forward shipped to Fort Worth, described as gasoline, to the Ft. Worth refinery, and thereafter starting in 1915, continuing up to December, 1916, all of it except that going to Pittsburgh was shipped to Port Arthur refinery, billed and described as gasoline; that following December 2, 1916, shipments were made of the blended commodity from Kiefer only to Port Arthur, and described as unrefined naphtha and to Shady Side, Pittsburgh, to the Company, the Gulf Company's plant, and described as gasoline in the billing. That is all, of course, subject to our objection and our exception.

“By Mr. Swacker: Does that cover the entire field?”

"By Mr. Chambers: We accept that admission but we are still depending upon this witnesses testimony.

"By the Court: I will not permit you to cover any evidence covered by the admission.

"By Mr. Chambers: I say we are still standing on this witnesses testimony and we accept their admission.

"By Mr. Diggs: If the court please we move to strike from the record that portion of this witnesses testimony which he says it is his best recollection at the time that this product was shipped in 1913 and 1914 back to Port Arthur, because he says—he shows it was not his business to ship and he had no connection with the shipping and no means of knowing.

"By the Court: On what do you base your recollection. First where did you get your information—what were your duties there?

"A. I was loading the cars out and taking the gravity test of it as I remember, after that time we did ship to Port Arthur and I don't remember just where we stopped.

"By the Court: Now in taking the gravity test and loading the cars did you have occasion to see the shipping orders and bills of lading and things like that?

"A. No, that wasn't part of my business.

"By the Court: Did it come under your observation in the discharge of your duties, either directly or indirectly?

"A. Well they may have come under my observation, yes I have seen lots of bills of lading but I couldn't tell you when we stopped shipping north and went back to shipping to Port Arthur, as I say that is a matter of record.

"Q. Have you got those records?

"A. The records are here.

"By the Court: I will let you withdraw this witness and confer with the other side and get the record. Whatever they show, that is better. Of course that is one way of proving a man's best recollection, but it is not a definite recollection. That don't have strong probative effect. If objection is made on the ground it was not the best evidence I will sustain that.

"By Mr. Swacker: Very well we make that now.

"By the Court: I sustain it.

"By Mr. Swacker: We will also admit——

"By Mr. Chambers: I don't know.

"By Mr. Swacker: You only have Kiefer, you haven't touched Drumright and Jenks.

"By Mr. Chambers: How do you know we want that?

"By the Court: Very well. Do you all want to cross examine the witness now?

"By Mr. Swacker: Yes, sir.

"By the Court: I struck the evidence out I don't suppose there is anything to cross examine on.

"By Mr. Swacker: I was going to cross examine him on the grade of the blend. I have not stated that the blend was the same degree of blend.

"By the Court: Did they ask him about the blend?

"By Mr. Swacker: They asked him if it was blended. It isn't established as to whether it was the same character of blend at all that was shipped. That is the blend in 1914 was of the same character of blend that we shipped subsequently. We don't concede it was the same in this admission." (S.M. pp. 564-570.)

XXXII. In admitting the evidence while the witness Hogland was on the stand respecting shipments by the Gypsy Oil Company from Kiefer, Oklahoma, to Shady Side, Pennsylvania; said evidence being as follows:

"By Mr. Chambers: The purpose of this witness is to show the materials shipped from Kiefer was shipped north and south the same as here and from the same tank.

"By Mr. Swacker: We will admit that.

"By Mr. Chambers: One shipment north and the other shipment south? Will you admit during this period that there was a commodity manufactured at Kiefer shipped out of the same tank at Kiefer, one car loaded, designated as gasoline, designated Shady Side, Pennsylvania, and the other designated unrefined naphtha to Port Arthur?

"By Mr. Swacker: We do.

"By Mr. Chambers: At the same time.

"By Mr. Swacker: Yes, sir. Our previous ad-

mission was it was the same material and if it makes it stronger we will say it is out of the same tank at the same time and this not as strong as the other.

"By Mr. Chambers: We have the other admission in. That is all with this witness.

"By Mr. Swacker: Of course this is admitted subject to our objection to the admissibility of the evidence that it is incompetent.

"By the Court: Yes." (S.M. pp. 580, 581.)

XXXIII. In admitting the testimony of the witness Koontz respecting the character of material upon which the doctor test was made, the evidence not showing the witness to be qualified to say: said testimony being as follows:

"The Court: Now, what doctor test did you make, on what commodities?

"Mr. Swacker: I object to his attempting to testify to any particular commodities, as being unqualified.

"The Court: If he knows, he may tell. Do you know what commodities you make a test on, and you may testify, and you can have you exception. Go ahead.

"A. We made the doctor test when specified.

"The Court: Well, propound the question to him.

"Q. Specified by whom? A. The man in charge.

"The Court: Who was usually in charge, what did they call him?

"A. The man over me?

"The Court: Yes.

"A. Chief chemist; the man in charge of the laboratory, in other words.

"The Court: Well, have you got any specific instances you want to ask about? Go ahead.

"Q. Now, isn't it a fact that the doctor test was made rather seldom, on gasoline and naptha?

"Mr. Swacker: I object to that. It is not shown the witness is qualified to know what gasoline and naptha are.

"The Court: If he knows, he may answer, and you may have your exception.

"Mr. Swacker: Now, is it not shown he is qual-

ified in the course of business. May I cross the witness just a minute on this?

"By the Court: If he knows the physical fact I will let you cross examine afterwards and strike it out if it is not competent and relevant.

"By Mr. Payne: Answer the question.

"By the Witness: State the question, please.

"Q. Whether the doctors tests were usually made on gasoline and naptha?

"By the Court: If you know.

"By Mr. Swacker: We object on the grounds stated.

"By the Court: You have your objection and exception.

"By Mr. Swacker: Exception.

"A. I don't know that it was usually made on all stuff. I was only on for eight hours a day.

"By the Court: What did you make it on then, if you know when you were on duty.

"A. Made it on shipments of gasoline going out under specified order when necessary.

"Q. What was the purpose of this doctor test?

"By the Court: If you know.

"By Mr. Swacker: I object to that.

"By the Court: If you know, you say on specified orders when necessary. Now when was it necessary?

"A. When we got the orders." (S.M. pp. 586-588.)

XXXIV. In admitting the evidence while the witness Koontz was on the stand, respecting instructions to laboratory boys to designate the commodity formerly called "Kiefer gasoline" as "unrefined naptha"; said evidence being as follows:

"Q. Is it a fact that instructions were received by you in the laboratory that the oil that had been previously designated as Kiefer gasoline should thereafter be designated as unrefined gasoline?

"The Court: And if so, when?

"A. I cannot remember the date.

"The Court: About when?

"A. I could not say.

"The Court: What year?

"A. I could not say that.

"Mr. Swacker: If any importance is sought to be attached to that--I don't know what the facts are, but we will concede what the government is seeking to prove, that in substance instructions were issued to the laboratory boys to call this unrefined naphtha from the time that the practice to call it unrefined naphtha on the shipping arose. I don't know what the facts are in that respect, but we will concede that; but we deny the relevancy of it, and of course we object to the admissibility of it.

"The Court: Very well.

"Mr. Payne: That is all." (S.M. p 593.)

XXI. In admitting the testimony of the witness, Otey, in substance, that he copied the words "painter's naphtha" from a car slip, said car slip not being in evidence.

XXXVI. In admitting in evidence and permitting to be read and shown to the jury Exhibits Numbers 77, 78 and 66, which exhibits the evidence of Government's witnesses showed to be lead pencil records of the physical characteristics developed by laboratory tests of material received at Port Arthur, which it had been the custom of the testers to designate previous to December 2, 1916, generally as "Kiefer gasoline," sometimes as "Kiefer gas," and sometimes "Kiefer," and thereafter as "unrefined naphtha," the words, "gasoline," and "gas," having been erased from the *entires* formerly reading "Kiefer gasoline," or "Kiefer gas." Because: (a) said entries do not constitute an admission, nor tend to establish any fact, that the material in question was gasoline, the evidence of Government's witnesses showing that it was not the duty, nor within the scope of the employment, of the parties making such entries to classify or describe the material, but that their sole function was to record the physical characteristics developed by the test; (b) the erasures were not admissible for the purpose for which they were offered, of establishing intent at the time when they were admitted, the *corpus delicti* not having been established at such time; and not shown to have been made by, at the instance of, or with the knowledge or consent of any agent of defendant, the scope of whose authority embraced matters affecting freight charges.



XXXVII. In admitting in evidence and permitting to be read and shown to the jury Exhibits Numbers 80, 81, 82, 83 and 84, said exhibits consisting in, 80, a bound file of monthly statements kept at the Port Arthur plant showing car numbers and gallonage of shipments received at Port Arthur from Kiefer, bearing heading unrefined naphtha after May, 1917, and without heading previous thereto; Exhibits 82 and 84 being statements from the files of the general office of defendant at Pittsburgh, Pennsylvania, with Exhibits 81 and 83, the latter being letters of transmittal, showing the same date for the months of April and May, 1917, such statements bearing the heading "Kiefer gasoline," the Government contending that headings had been cut off the Port Arthur statement, Exhibit 80, for purposes of concealment; there being no evidence that headings had been cut off Exhibit 80, nor, if there had in fact been such cut off, why or when it was done: Such evidence not being competent to prove that the material denominated "Kiefer gasoline" was gasoline, and not being admissible at the time for the purpose for which offered, of establishing intent, the *corpus delicti* not having been established at such time; and not shown to have been made by, at the instance of, or with the knowledge or consent of any agent of defendant, the scope of whose authority embraced matters affecting freight charges.

XXXVIII. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 85, 90, 91 and 92, being telegrams exchanged between C. B. Ellis and R. R. Mitchell and W. M. Powers in January, 1914, in relation to rates on gasoline between Kiefer and Port Arthur.

XXXIX. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 86 and 87, being letters exchanged between C. B. Ellis and W. M. Powers in May and June, 1916, in relation to rates on gasoline.

XL. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 88 and 89, being letters exchanged between C. B. Ellis and J. R. Christian and F. G. Reilly in February and March, 1915, respecting rates on naphtha from Port Arthur to Kiefer, and rates on gasoline from Kiefer to Port Arthur.

XXI. In admitting in evidence and permitting to be read to the jury Exhibit No. 93, being a letter from J. R. Christian and F. G. Reilly to C. B. Ellis dated January 15, 1915, in relation to the rate on naptha from Port Arthur to Kiefer.

XLII. In admitting in evidence and permitting to be read to the jury Exhibit No. 94, and admitting the testimony of the witness Timmons in relation thereto.

XLIII. In admitting in evidence and permitting to be read to the jury Exhibit No. 95, and admitting the evidence in relation thereto, showing in substance that during the years 1913 and 1914, at the inception of shipment from the plant at Kiefer, shipments were made and sold commercially of a product described as "blended gasoline."

XLIV. In admitting the testimony of the witness Millard in substance, that prior to December 2, 1916, the Gypsy Oil Company billed shipments as gasoline.

XLV. In admitting the testimony of the witness Millard respecting commercial shipments; said testimony being as follows:

"Q. Mr. Millard, you referred to some gasoline that was marketed direct from Kiefer and shipped from Kiefer to customers did you not? A. Yes, sir.

"Q. How was that billed? A. I believe as gasoline.

"Q. State the difference between that product shipped direct and the product shipped to Port Arthur?

"A. At that time?

"Q. Yes.

"A. The only difference was in the gravity.

"Q. What was the difference?

"A. That I could not tell. The different customers call for different gravities in their orders, and the product was made to meet those orders.

"Q. Now, is it a fact that the gasoline which you shipped direct to the customers, and sold on the market as gasoline, is it a fact that the only difference between that and what you ship to Port Arthur, was that the gasoline marketed direct was blended with more naptha?

"A. I do not remember the exact amount of naptha it was blended with. The only difference was in the gravity.

"Q. How could you control the gravity?

"A. By blending.

"Q. Well, now, suppose, for example, that you had a seventy gravity casinghead gasoline, and wanted to produce a sixty gravity gasoline for the purpose of being marketed direct, how would you accomplish that result?"

"A. By using naphtha.

"Q. By blending the casinghead with naphtha?"

"A. Yes sir.

"Q. Now, suppose you wanted to get the gravity to say fifty-eight, instead of sixty; how would you accomplish that? A. Use more naphtha.

"Q. Add a little more naphtha? A. Yes, sir.

"Q. Now, was there anything else done to the gasoline that was sold direct besides blending it with naphtha?"

"A. No, sir.

"Mr. Swacker: We would like an objection and an exception to all this testimony, on the ground of irrelevancy and immateriality. I just did not want to interrupt him.

"The Court: Very well. You may have your exception to it." (S.M. pp. 700-702.)

XLVI. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 100, 101, and 102, being records of distillation tests between March 31, 1917, and February 1, 1918.

XLVII. In admitting in evidence and permitting to be read to the jury Exhibit No. 120, being a statement compiled by the witness Otey of car numbers and gallons.

XLVIII. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 110 to 119, inclusive, being records of distillation tests from October 14, 1916, to December 3, 1918.

XLIX. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 68 and 69, being letters dated June 2, 1914, and December 29, 1915, respectively, from C. B. Ellis, Traffic Manager of the Gulf Refining Company, to W. P. Donovan, Superintendent of the Gypsy Oil Company, giving directions concerning the routing of shipments from the Gypsy Oil Company to the Gulf Refining Company; said letters in no wise tending to establish that said Ellis was connected with the Gypsy Oil Company, for which purpose they were admitted.

L. In admitting the testimony of the witness Freeman concerning the character of plant operated and material shipped by the Carter Oil Company from Cartereo, as follows:

"Q. What kind of a plant has your company at Cartereo, or rather what kind of a plant did you have in the year 1916, from May on?

"Mr. Diggs: If the court please, can I make the same reservation I did before? I do not want to make objection each time. We don't object to these specifically, but want the right to move to strike hereafter.

"The Court: All right.

"A. A skimming plant." (S.M. p. 807.)

LI. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 135, 136, 137 and 138, being telegrams and letters from C. B. Ellis to W. P. Donovan.

LII. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 120 to 134, inclusive, consisting of pump house records from November 7, 1916, to May, 1918.

LIII. In admitting in evidence and permitting to be read to the jury Exhibits Numbers 10 to 14, inclusive, being unloading records.

LIV. In admitting in evidence and permitting to be read to the jury Exhibit No. 139, being General Order No. 1 of the Director General of Railroads, offered as establishing the adoption by said Director General of Railroads of existing tariffs on file December 29, 1917.

LV. In admitting the testimony of the witness Moss respecting an alleged test and the material used therefor; said testimony being as follows:

"Q. What is the company you are with?

"A. Brady, Swanson & Calley.

"Q. Did you sell some gasoline to a party that came to your plant the night before last about half past nine?

"A. I did not sell any.

"Q. Did the Bureau Inspector and myself and Mr. Gann?

"A. I did not sell any.

"Mr. Swacker: I object, as being irrelevant, incompetent and immaterial.

"The Court: The objection is overruled.

"The Court: Well, did you furnish it to him?

"A. Yes, sir.

"The Court: When was that?

"Mr. Payne: Night before last.

"Q. What kind of gasoline was that?

"The Court: Describe what the commodity was.

"Q. Describe what the commodity was.

"Mr. Swacker: Your honor understands this is no part of the test made jointly.

"The Court: Very well. I am going to let this evidence in of this independent test, and I will let your evidence in of your independent test, stand before the jury.

"A. It was just raw casinghead gas.

*By Mr. Payne.*

"Q. Did you take the gravity of it? A. No, sir.

"Q. Did you see it done? A. Yes.

"Q. What was the gravity? A. I—

"Mr. Swacker: We would like to have the privilege of cross examining the witness on the manner of producing before showing what was accomplished in the test. It is a different class of material—if it is a different class of material, we say it is irrelevant.

*By Mr. Payne.*

"Q. Did you put that gasoline in the automobile?

"A. Yes, sir.

"Q. What make of automobile was it, did you notice?

"A. I never noticed.

"The Court: Hold on. I will let them have the privilege of laying the predicate for their objection.

*Mr. Swacker.*

"Q. Mr. Moss, what character of plant did you operate. What character of casinghead plant did you operate?

"A. High and low stage.

*The Court.*

"Q. Compression or absorption plant?

"A. Compression.

*By Mr. Swacker.*

"Q. Did you have expanders on your plant?

"A. No, sir.

"Q. Do you know what kind of plant the Gypsy has, whether that has expanders on it or not? A. I do not.

"Mr. Swacker: We suggest there is no proper foundation laid to take this testimony in evidence.

"The Court: I will permit it, with the understanding that you are to introduce what the difference is between compression plant with expanders and without expanders.

"Mr. Payne: Allow me to do that?

"The Court: Yes, if you don't do that, I will strike this evidence out. It was admitted yesterday that that didn't make any difference. I will permit it only on the understanding that evidence will be introduced to support that contention and if it is not I will strike it out.

"Mr. Swacker: Yes, sir, I think, of course, before additional evidence is offered, that should be established because it is a necessary predicate.

"The Court: Very well, it is within the power of the court to regulate the evidence. If it is not connected up I will instruct the jury not to consider it.

"Q. What did you state was the gravity of the gasoline? A. Eighty-five.

"Q. Did you see the tank of the automobile drained of the gasoline it already had in it? A. I did.

"Q. And you put the 85 gravity raw gasoline right into the tank? A. Yes, sir.

"Q. And did you see them drive away in the car?

"A. I did.

"Mr. Payne: That is all.

*Cross Examination by Mr. Swacker.*

"Q. Mr. Morris, did you examine the performance by the parties there handling that car to see whether they drained the car completely of the gasoline theretofore in it?

"A. It was drained out of the tank in the rear.

"Q. Well, do you know whether they drained out the reserve tank? A. I do not.

"Q. Then you don't know but that the gasoline in the reserve tank is what propelled the car away, is that correct? A. I do not.

"Q. Do you know whether they drained the gasoline from the carburetor? A. I do not.

"Q. Do you know whether they drained the gasoline from the carburetor? A. I don't know.

"Q. Did you see them drain the gasoline from the carburetor or did you not? A. I did not see them do it.

"Q. Do you know what an expander is, on a compression plant? A. No, sir." (S. M., pp. 1152-1155.)

LVI. In admitting the testimony of the witness Downing respecting his using casinghead gasoline from the Crosby & Gillespie plant to propel his car; said testimony being as follows:

"Q. What is your business?

"A. Casinghead gasoline business.

"Q. How long have you been in that business, Mr. Downing? A. Eight years in Oklahoma.

"Q. How long altogether? A. Ten years.

"Q. What is the material, what product do you produce out there?

"Mr. Swacker: I object; incompetent, irrelevant and immaterial; no showing here that there is any connection with this witness and the transaction involved here.

"The Court: Now, he asked how long he had been in the refinery business.

"Mr. Payne: In the casinghead gasoline business.

"The Court: Whereabouts have you been in business?

"A. Kiefer, Oklahoma.

"Mr. Payne: What is the name of the plant?

"A. Crosby & Gillespie.

"Q. Have you ever used casinghead gasoline in an automobile?

"Mr. Swacker: We object, as being irrelevant, incompetent and immaterial, and no showing what character of casinghead—

"The Court: He can show—

"Mr. Payne: Show first he used it, and then what is the gravity.

"Q. What kind of a plant do you operate?

"Mr. Swacker: We will be here from now until next June, the Government can call 20 or 30 witnesses to state they did, and we can call fifty or a hundred witnesses to state they did not, it is a collateral issue, and—



"The Court: You brought it on yourself.

"Mr. Swacker: Of this particular material——

"The Court: Not of the material shipped, I permitted you to go and show by a witness that they tested a material and it was the character of the material of the Kiefer plant. That is the way I let the evidence in. They did not know of their own knowledge that it was the materials of the Kiefer plant, but they tested it as experts, and knew the character of the material at Kiefer, and I permitted them to testify it was the same material.

"Mr. Swacker: We connected it up by proving by the witnesses who furnished it to them.

"The Court: You showed, though, it was subsequent to this date.

"Mr. Swacker: We have also shown and it is undisputed that one plant will continue to produce the same character of material at a later date that it produced at a previous date, but it is a wholly different proposition.

"The Court: I ruled on that; I will let them see what this is. You are manager of the Cosden plant. How long have you been manager of it? Let's get the predicate.

"A. Seven years, ever since it was built.

"Q. What kind of a plant is it? A. Compression.

"The Court: Are you acquainted with the Gypsy plant there?

"A. Yes, sir.

"The Court: What difference, if any, is there in the make-up of the Crosby & Gillespie plant and the Gypsy plant at Kiefer?

"A. Well, no, I couldn't say, I am not acquainted in that way that I can say. I have never been through the Gypsy plant.

"The Court: Well, is your plant an absorption or compression plant?

"A. Compression.

"The Court: Go ahead.

"Q. Are there expanders in your plant? A. Yes, sir.

"Q. State, Mr. Topping, whether you have used the casinghead gasoline in an automobile?

"Mr. Swacker: To which we object as incompetent.

"The Court: From that plant. From that plant, from that Crosby & Gillespie plant, which is a compression plant? What does it compress?

"A. Gas.

"The Court: Casinghead gas?

"A. Yes, sir.

"The Court: And by compression, converts it into what is known as casinghead gasoline.

"A. Yes, sir.

"The Court: You use the expansion method?

"A. Yes, sir, expansion for cooling.

"The Court: This character of casinghead gasoline that you say you used in cars, where did you get it from?

"Mr. Swacker: He hasn't said he used it. They asked him. You asked a question in which you implied that he said he had used it. He hasn't answered the question.

"The Court: I think the record shows that. Did you use it in a car?

"A. Yes, sir.

"Mr. Swacker: To which we object.

"The Court: I want to see the condition.

"Mr. Swacker: Yes, but we want our exception.

"The Court: I will give you a chance to make your objection and consider it made in time.

"The Court: Go ahead, answer the question, you know how to lay the predicate.

"Mr. Payne: That is what I have been trying to do.

"Q. Did you use the gasoline from that plant?

"The Court: I insist that is not—where did you get the gasoline you say you used in the car?

"A. From Crosby and Gillespie plant.

"The Court: When?

"A. Ever since I built the plant for six years.

"The Court: Go ahead.

"Mr. Payne: That is all.

"The Court: You mean you made it a practice of using casinghead gasoline to operate your car for that six years?

"A. Yes, sir, may have sometimes bought some other gasoline when I was not there.

"The Court: Did you use anything else besides this casinghead gasoline to run your car?

"A. Yes, sir.

"Mr. Swacker: We ask this evidence be stricken out as being irrelevant, incompetent and immaterial and not being shown it is the same character of material at all and the conditions are not shown, surrounding the manufacture, surrounding the particular material used by the witness.

"The Court: I will let the record show that they shipped this very stuff—who does the evidence show they shipped it to.

"Mr. Payne: The Texas Company at Port Arthur, at their plant.

"The Court: Do you know the specific gravity; the range of the specific gravity of this commodity you are talking about here, do you know the maximum and the minimum of it?

"A. I do not.

"The Court: The way I get it from you is that you have run that plant for the past six years, and that plant is used exclusively for abstracting casinghead gasoline from the gas by the compression method?

"A. Yes, sir.

"The Court: You did expand it and make it a practice to use that commodity in running your car?

"A. Yes, sir.

"The Court: Very well, I will let it stand over your objection and give you an exception.

"Mr. Swacker: Yes.

"The Court: I merely asked these question- to get the—

"Mr. Swacker: We object now, with the development, it is specifically shown here it is not the same material he stated in response to the court he didn't know what the gravity was.

"The Court: I admit he shows that practice during the year, and it is for the jury to say what the weight is, to say that during that time it is the highest or lowest gravity. I don't know whether this evidences on this test are admissible until it is unfolded and I hear the arguments on both sides as to

the law. I haven't made up my mind as to its evidentiary weight.

"Mr. Swacker: Give me an exception.

"The Court: Yes." (S.M., pp. 1115A-1161.)

LVII. In admitting the testimony of the witness Dykema respecting the conduct and results of an alleged test of material presumed to have been casinghead gasoline, whereas the evidence showed that the witness did not know and had not examined to ascertain whether the reserve tank or carburetor of the car used, had been drained of real gasoline or not; said testimony being as follows:

"Mr. Payne: Mr. Dykema, did you, in connection with a number of the Bureau of Explosive inspectors, and others, make a trip to Jenks night before last?

"A. I did.

"Q. Will you—

"The Court: Do you know this man Moss who testified here you saw him—

"A. I saw him, sir.

"The Court: Will you state what you want to do, Mr. Payne?

"Mr. Payne: What occurred at Jenks.

"Mr. Swacker: To which we object as incompetent, irrelevant and immaterial.

"The Court: Well, if you get what place you are at I will admit it. Jenks is a very indefinite proposition.

"Q. State what occurred in the plant of the Brady, Swanson & Calley people.

"The Court: If anything did occur.

"Mr. Swacker: To which we object, incompetent, irrelevant and immaterial, having nothing to do with this defendant or the Gypsy Oil Company.

"The Court: Overrule the objection.

"Mr. Swacker: We except.

"A. We went to the plant—

"The Court: Is that the plant where Mr. Moss was?

"A. Yes, sir.

"The Court: Go ahead.

"A. We drained our gasoline tank thoroughly.

"The Court: What do you mean by thoroughly?

"A. We drained the tank which connected, of all, as far as the carburetor, and as far as we could determine, there was no gasoline left.

"The Court: Did you drain the reserve tank?

"A. I don't know if there was a reserve tank on the car or not.

"The Court: Did you look to see, did you clean the carburetor and clean that?

"A. The carburetor drains back to the tank automatically if you open the bottom of the tank.

"The Court: Did you examine to see?

"A. We examined the tank and the gasoline did come out of the hole in the bottom of it.

"Mr. Swacker: May I cross examine him on that?

"The Court: Yes.

*By Mr. Swacker.*

"Q. You say you understand; did you examine to see whether it was in fact drained or look at the carburetor at all? A. We did not.

*By Mr. Payne.*

"Q. To the best of your knowledge and belief, was the car entirely drained of the gasoline that was in it?

"Mr. Swacker: I object, being irrelevant, incompetent and immaterial.

"The Court: Yes, I sustain the objection.

"Q. Go ahead and state what occurred.

"Mr. Swacker: I object, as being irrelevant, incompetent and immaterial.

"The Court: You will have to show there was no gasoline in the car or the carburetor was cleaned, before I will admit the evidence.

"Mr. Payne: We can show even if there had been any in the car left, it would have been used up very quickly.

"The Court: You must do that and lay the predicate before I admit the evidence.

"Q. Mr. Dykema—

"Mr. Payne: They presume something—

"The Court: You can lay the hypothetical question, lay the predicate for the hypothetical question,

prove your predicate. I have ruled and you must follow what the court says, and we will get through.

"Q. State whether or not—what kind of a car was it?

"A. It was a Packard car.

"Q. State whether the running of a Packard car from Jenks to Tulsa would use up all of the gasoline which might have remained in the car had there been a reserve tank, and had there been any gasoline left in the carburetor?

"Mr. Swacker: I object to that as incompetent.

"The Court: I am going to let them prove this, but I will state now, I don't think the weight of this evidence amounts to much.

"Mr. Swacker: Your honor observed the witness says he don't know how much the reserve tank might contain.

"The Court: If you are going to make a test, you must take all manner of precaution to make the test.

"Q. State whether or not, in your opinion, that would use up all the gasoline. A. It would.

"Mr. Swacker: We have an exception.

"The Court: I will let the circumstances go to the jury.

"Q. State what kind of gasoline was put into that car after it was drained of gasoline that was already in it.

"Mr. Swacker: I object to that question, particularly as to the form, because it is already testified by the witness that he don't know whether it was completely drained.

"The Court: That is for the jury. What the attorney says don't make evidence. The jury understands what was done.

"The Witness: Repeat the question, please.

"Q. As to what kind of gasoline was put in the car after it was drained?

"A. The product of the compression of natural gas.

"Q. What was the gravity of it?

"A. It was 85 gravity.

"Q. 85 gravity. Did you take the gravity of it at the plant? A. I did.

"Q. What was the vapor tension of that gasoline?

"A. The vapor tension, as we determined it, was seventeen and one-half pounds.

"Q. Seventeen and one-half pounds.

"Mr. Swacker: I don't want to be insistent, but may it be considered that we have an objection to each question and answer, and the court overrules the objection and we save an exception?"

"Q. After you filled the car with this 85 gravity gasoline—did it start the motor?"

"A. It did start the motor repeatedly.

"Q. Was there any trouble in starting the motor?"

"A. There was none.

"Q. State how far the car ran on that gasoline.

"A. It ran——

"Q. Well, where did it run to?"

"A. Ran back to Tulsa, ten miles, I understand it is about twelve miles.

"Q. Did the car stall at all on the way back?"

"A. No, sir.

"Q. Was there any trouble in the running of the car?"

"A. None that I could determine.

"Q. Was the road hilly or level? A. Quite hilly.

"Q. What was the condition of the road near the Brady, Swanson & Calley plant?"

"A. The road near the plant there was new and very sandy and rutted deeply.

"Q. About what speed did the car make on the way back? A. We made as high as 35 miles an hour.

"Q. Was there any adjustment made on the carburetor, on the car?"

"A. None that couldn't be made on the dash.

"Q. Who drove the car, Mr. Dykema?"

"A. I do not remember the driver's name, I believe Donnelly.

"Q. Was it a hired car? A. Yes, sir.

"Q. Where was it hired?"

"A. At a stand across from the Tulsa Hotel.

"Q. Had you ever seen the car, or the driver, before?"

"A. Not to the best of my knowledge.

"Q. Had you ever been to the plant of Brady, Swanson & Kelley before? A. No, sir, had not.

"Q. Had you ever met Mr. Moss before?"

"A. No, sir.

"Q. What kind of gasoline did you ask him to give you? A. Casinghead gasoline.

"Q. Raw casinghead? A. Raw casinghead." (S.M. pp. 1178-1183.)

LVIII. In admitting the testimony of the witnesses Dykema without his being qualified to have an expert opinion,



concerning his belief as to the possibilities of operating a car with material the character of which was not definitely known; said testimony being as follows:

"Q. Mr. Dykema, state in your opinion whether a material even lighter than the material you used last night would run an automobile? A. It would.

"Mr. Swacker: I object to that as incompetent, irrelevant and immaterial.

"The Court: What was the question.

(Question read.)

"By the Court: Material of what kind?

"Mr. Payne: Of the kind that he used in the Pierce Arrow car last night.

"The Court: I believe I will permit that. Their experts have testified as to what it wouldn't do and so on. The converse is true?

"A. It would.

"Q. How light would the material have to get before it would fail to run a car?

"The Court: What material are you talking about?

"Mr. Payne: The same material, gasoline.

"The Court: The material that you had in that car?

"Mr. Payne: Yes.

"The Court: The commodity you had in that car?

"Mr. Payne: The commodity you had in that car?

"Mr. Swacker: I object as being irrelevant, incompetent and immaterial, unless the proper foundation is made, showing the witness has tried and demonstrated and found what point materials will not run the car.

"The Court: He testified he is an expert and has had experience in casinghead gas and things like that, that is *prima facie* evidence which would entitle him as an expert to testify. I will permit you to cross examine him, if you desire.

"Mr. Swacker: I except.

"The Court: I think the authorities hold the court determines whether a man is an expert.

"Mr. Swacker: Yes, sir, but the question presupposes the knowledge which one could only have by

ascertaining in a profession and it is not ascertained whether he attained that knowledge in a profession.

"The Court: I will permit him to testify.

"Q. Is as to whether material, even lighter than the material you used last night would run an automobile and——

"The Court: An ordinary automobile?

"Q. An ordinary automobile, I mean, ordinary automobile and of the point of likeness——

"The Court: Not a Ford—but I don't say that out of derision of a Ford—but a Buick or Dodge or Pierce Arrow.

"Mr. Chambers: More Fords in use than any other car and probably use more gasoline than any other car.

"The Court: I believe they testified yesterday most anything would run a Ford.

"Mr. Chambers: It makes it of commercial value then.

"The Court: Well, when you determine the name, things like that, and it is offered for the purpose that I think it should be conformed to the name of those that you have mentioned, take at least an average grade to determine it, I will confine it to Buicks, Dodges, and Pierce Arrows or Chandlers, cars of that character.

"Q. Yes, any other standard than a Ford?

"A. I believe any liquid made from natural gas by compression will run an automobile." (S.M. pp. 1188-1190.)

LIX. In admitting the testimony of the witness Dykema not shown to be qualified as possessing knowledge of the character testified to; said testimony being as follows:

"Q. Is it not a fact that the product from the compression of natural gas is what is universally known as gasoline?

"Mr Swacker: I object to this as involving—he supposes that the witness has universal knowledge.

"Mr. Payne: He has.

"The Court: I will let him answer the question, whether it is commonly known, not universally known.

"Mr. Swacker: I think he should be limited in it——

*By Mr. Payne.*

"Q. Is it commonly known as gasoline?

"The Court: You can bring out what he means by commonly known.

"Mr. Swacker: Exception, please.

"Q. Is that liquid commonly known as gasoline?

"A. It is.

"Q. In the trade? A. Yes, sir.

"Q. In the scientific world? A. Yes, sir." (S.M. p. 1206.)

LX. In admitting the evidence of the witness Debar concerning having used casinghead gasoline to propel a car, it not being shown that the material was of the same character as that produced by the Gypsy Oil Company; said evidence being as follows:

"Q. Wouldn't casinghead gasoline run a motor car?

"Mr. Swacker: I object; incompetent, irrelevant and immaterial; doesn't show the particular kind of casinghead gasoline involved.

"Q. Have you used casinghead gasoline in any car?

"A. Yes.

"Q. When and where?

"A. During the investigation of the natural gas situation for preparation before the Corporation Commission I drove a Paige car—

"Mr. Swacker: I object to further testimony, unless it is shown what material came from these plants, and that it is identical.

"The Court: Let's see, and then I will be able to rule on it.

"A. I ran a Paige seven-passenger sedan a great number of miles.

*The Court.*

"Q. What sort of casinghead gasoline did you use?

"A. I will get to that, your honor. I will describe that.

"The Court: Yes.

"A. A part of the time on casinghead compression gasoline and absorption plant, both combined; and in another case, on certain compression casinghead gasoline. At an investigation for the North American Refinery, held at Cushing, I believe three years ago this summer, from some certain compression plants I drove a Ford car

several hundred miles on compression gasoline. Also one of the Cushing plants. And I drove a Dodge roadster with compression casinghead gasoline quite a time, some week or two, in that distance, with nothing but casinghead compression gasoline.

"Mr. Swacker: I ask now that that be stricken out as incompetent, irrelevant and immaterial, not properly identified as being the same material.

"The Court: I will overrule the objection.

"Mr. Swacker: Exception please." (S. M., pp. 1285-1287.)

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In rejecting evidence offered by the defendant upon said trial, to which defendant duly excepted, in the following instances, to-wit:

LXI. In sustaining the objection of the Government to the questions asked of its witness, Waddell, on cross-examination after having testified that he had collected on defendant's shipments the rate applicable to unrefined naphtha, whereby the defendant sought to show that in the month of July, 1919, upon the witness first attempting to collect rates applicable to gasoline he was enjoined by the United States District Court, at Beaumont, on the petition of defendant; said questions, offer and ruling being as follows:

"Q. Mr. Waddell, you testified that you had collected the unrefined naphtha rate on all shipments shipped by the Gypsy Oil Company to the Gulf Refining Company at Port Arthur since December 2?

"The Court: 1916.

"Q. 1916. Is it a fact, Mr. Waddell, that you did undertake to hold out some of these cars claiming a higher rate than the unrefined naphtha rate?

"Mr. Payne. I object unless he fixes the period your honor. I covered only the period from December 2, 1916, to March 31, 1919, which was the date of the indictment, the period covered by the indictment.

"Mr. Diggs: I will state the question again.

"Q. You did undertake in the year 1919, prior to November 22, 1919, undertake to hold some of these cars on the ground that they were subject to a higher rate?

"The Court: Now, after the railroads were put into the hands of the government, I will require you

to limit that. I believe this indictment goes up to that period.

"Mr. Payne: And beyond. But, your honor, what happened in November, 1919, can have no bearing on this case as the period we cover ends with May 31, 1919, and these gentlemen on the other side have been very particular to limit us to what happened during the period of the indictment itself. It is a well established rule. We have never attempted to show as to what has happened afterwards.

"Mr. Swacker: All these subpoenas duces tecum call for more than two months after the indictment. I understood your honor to rule this morning that you would allow evidence on certain matters up to the return of the indictment but not afterwards.

"The Court: I have ruled that is true.

"By Mr. Diggs: If the court please we can thrash this matter out in a second by stating to the court what I expect to prove and then let him rule on it.

"By Mr. Payne: Subsequent to the period no matter what it is it would not be competent.

"By the Court: I will hear you state what it is.

"By Mr. Diggs: The defendant Gulf Refining Company expects to prove by this witness and now offers such proof that sometime in the month of July, I think July 26th and up to and prior to November 22, 1919, he undertook to refuse to deliver the cars described unrefined naphtha shipped by the Gypsy Oil Company from the plants of said people at Drum-right and Jenks.

"By Mr. Payne: We object to the question as leading.

"By the Court: He has got a right to ask leading questions, this is your witness.

"By Mr. Diggs: To the Gulf Refining Company at Port Arthur and was compelled to deliver said cars to the Gulf Refining Company under said rate by order of the United States District Court at Beaumont in pursuance of an order made in a case in which the Gulf Refining Company was complainant and the Railroad Companies and Walker D. Hines the Director General of the Railroads were defendants.

"By the Court: You need not answer that question. I will sustain the objection.

"By Mr. Diggs: Exception if your honor please.

"By the Court: Alright give him an exception."  
(S.M., pp. 214-215.)

LXII. In sustaining the objection of the Government and rejecting the testimony offered by the defendant on cross-examination of the Government's witness League, by which defendant sought to prove that the witness had received a ruling from the chief inspector of the Bureau for the Safe Transportation of Explosives to the effect that the description used by the Gypsy Company was not incorrect; said questions, offer and ruling being as follows:

"Q. In the course of your duties as an inspector do you know of any controversy arising between yourself and Mr. Donovan the manager of the Gypsy Oil Company over an appropriate description to be used in shipping this product? A. No, sir.

"Q. Do you know of any controversy having arisen between Mr. Donovan and the inspector named Ennis?

"By the Court: Of your own knowledge, not from hearsay?

"A. No, sir.

"Q. Do you know of a controversy between yourself and this inspector Ennis in respect to the mode of description? A. Yes.

"Q. Will you state what that controversy was?

"A. There was an exchange of ideas between—

"By Mr. Payne: I anticipate that this, your honor, is in reference to a conclusion of law and I think that Mr. Swacker should bring out the nature of the controversy first?

"By the Court: Yes, sir.

"By Mr. Swacker: My previous question indicated the nature of the controversy, a controversy as to the proper description to be used on the shipping orders.

"By Mr. Payne: I think that that is triable by the regulations themselves, not what this man or that man or the other many may think about it.

"By the Court: On what theory do you claim that is admissible.

"By Mr. Swacker: We desire to show that such a controversy arose and that it was submitted to the superior officer of both of these inspectors, who ruled

in favor of the interpretation given by the Gypsy Company, and overruled the other inspectors. Now we don't say that that is controlling in any sense of determining what the commodity is, but we do say in the light of the evidence that has already been admitted as to the custom of calling the thing that it is relevant on that score.

"By the Court: I sustain the objection.

"By Mr. Swacker: Particularly on the question of intent. We say that if there was no concealment as has been shown by the shipping order; this witness has testified that it was evidenced always by the shipping orders that the commodity was casinghead, that it certainly negatives any intent to obtain an improper rate.

"The Court: This is not the way to prove it. You want to prove by him that he or any officer of these bureaus advised that this was the proper way to bill it, I will let you prove that.

"Mr. Swacker: I was getting to that. I was asking him what the controversy was.

"The Court: No, that is not it. It don't make any difference whether they had a controversy or not, if there was any officer whose duty it was to advise them told them that was the way to bill it, I will let you prove that.

"Q. Did you ever have any instruction from Colonel Dunn, the head of the Bureau of Explosives, to any question as to how this commodity should be billed?

"The Court: No, not that, but what he told these people. It doesn't matter whether they had any instructions or not, but if they told them that was the way to bill it, I will let you show it. I mean, if any of these inspectors advised the Gypsy that that was the proper way to bill it, I will let you prove that.

"Mr. Swacker: That is not exactly what happened. What happened was this, that this inspector would not be giving instructions to the Gypsy, but he communicated to his chief, and his chief gave him instructions.

"The Court: Well, I will exclude that.

"Mr. Swacker: Exceptions, then.

"The Court: That is not a matter for the jury. That is a matter for me." (S. M., pp. 490-493.)



LXIII. In sustaining the objections of the Government to and rejecting the testimony offered by the defendant through the witness League on cross examination, by which the defendant offered to show that the fact that there was a divergence in nomenclature as between the tariffs and the safe transportation rules respecting the article known as casinghead gasoline, was known to and discussed by a meeting at which said witness was present, attended by a majority of the producers of the locality, the witness having been permitted to testify on his direct examination concerning the name used by employees of such producers as he came in contact with; said questions, offer and ruling being as follows:

"Q. Did you attend a meeting of casinghead producers in the summer of 1918 or the spring of 1918, between the casinghead producers and the Bureau of Explosives, a conference? A. On May 11, 1918.

"Q. Here in Tulsa? A. Yes, sir.

"Q. I will ask you if you can state whether there was a large meeting of casinghead producers present at that meeting? A. Yes, sir.

"Q. I will ask if it involved a large portion of the producers of casinghead in this vicinity, or a large portion of the producers in this vicinity? A. Yes, sir.

"Q. Do you recall whether Mr. Donovan, the manager of the Gypsy Gasoline plant, was at that meeting?

"A. Yes, sir.

"Q. Do you recall whether Mr. C. B. Ellis was at that meeting? A. Yes, sir.

"Q. Do you recall whether any representative of the Texas Company was at that meeting?

"A. I don't recall.

"Q. Do you recall whether Mr. Jarvis was there?

"A. I don't know.

"Q. Who was there on behalf of the bureau?

"A. Of explosives?

"Q. Yes. A. Mr. W. S. Topping, C. P. Bisel.

"Q. Who is Mr. Bisel, connected with the bureau?

"A. The chief chemist.

"Q. Was Colonel Dunn there? A. No, sir.

"Q. Can you tell me what the purpose of that meeting was?

"A. A conference with the producers of casinghead gasoline.

"Q. Well, with respect to the rules proposed to be recommended by the Bureau to the Interstate Commerce Commission? A. Yes, sir.

"Q. I will ask you if you recall a discussion of that portion of rule 1824-K you read a while ago in the first edition reading 'and is shipped as gasoline,' and in the second rule reading 'must be described as gasoline, casinghead gasoline or casinghead naphtha'?"

"Mr. Payne: I object, your honor. I don't think that is legal.

"The Court: I don't see how that would be competent.

"Mr. Swacker: They have attempted to show by this witness what was common terminology.

"The Court: No, just the practice of the companies, how they use it.

"Q. Was there any discussion in that meeting——

"Mr. Payne: We object to any discussion in the meeting. It was in reference to proposing an amended rule. Now, the amended rules themselves are the law and not what the discussion was in reference to putting it in. There may have been all kinds of opinions expressed.

"Mr. Swacker: I am not asking this witness to testify to what the law was. I am asking him to testify the subject of discussion there in so far as it had anything to do with the name of this commodity.

"The Court: I will permit you to show they discussed it but not what they said.

"Mr. Swacker: Very well.

"Q. Was there a discussion there of the name properly to be applied to this commodity? A. Yes, sir.

"Mr. Swacker: I do not want to transgress your honor's ruling in that respect, I ask this question——

"Q. Was objection made there that there was a divergence in nomenclature of this particular article as between the tariffs and the safety transportation rules——

"Mr. Payne: I object to what further transpired at the meeting unless we are going to take up the entire meeting and the government to show things favorable to its side.

"The Court: I permitted them to state what was discussed, but not what was said. That is a collateral matter and hearsay, would have to unfold before the jury everything to see the merit.

"Mr. Swacker: I think that is correct. The only thing—I only think I am entitled to it, because the

witness on direct examination went into this character of testimony as to what people called it.

"Mr. Diggs: I suggest that the only theory on which the evidence of this witness was admitted this morning was for the purpose of showing how the people in this vicinity name this article——

"The Court: No, how the trade, body of men.

"Mr. Diggs: We have shown on these—we have shown all these producers or a majority were present or together discussing the proper name to apply to this article.

"The Court: No, I will not permit that. I sustain the objection of the government.

"Mr. Swacker: I except.

"Mr. Payne: I don't object if you let the Government go into it, if you will do that.

"The Court: No, the Government cannot go into it, and I will not permit him to state what he heard and discussed—what he heard them discuss there.

"Mr. Swacker: I except." (S.M., pp. 494-497.)

LXIV. In rejecting the evidence offered by the defendant upon cross examination of the witness Powers showing the witness had established the rate on unrefined naphtha based on defendant's representation that the commodity to be shipped was a low grade article moving to Port Arthur for finishing; said questions, offer and ruling being as follows:

"Q. Did he make the explanation you have heretofore stated in relation to it?

"A. That it was a low grade article to be shipped and treated and reshipped.

"Q. Yes, sir, to Port Arthur to be further finished.

"A. I understood that was to be done, yes, sir.

"Mr. Swacker: Now, may I ask if he established a rate finally based on those representations?

"The Court: No, I will not permit you to prove that.

"Mr. Swacker: All right. That is all." (S.M., p. 719.)

LXV. In rejecting the evidence offered by defendant upon cross examination of the Government's witness Reilly, whereby defendant sought to show that the witness understood the representations of defendant concerning the material to

be shipped as being the material that was in fact shipped, and was actuated in the establishment of the rates used by such understanding; said questions, offer and ruling being as follows:

"Q. Mr. Reilly, did your knowledge and conception of the term unrefined naptha, extend to the point of knowing whether or not there was embraced within that term, naptha produced either by casinghead compression plants or by a topping plant?

"A. I don't think we could or would take into consideration as to how it was produced.

"Q. The different methods of production?

"A. The different methods of production

"Q. Made no difference to you? A. No, sir.

"Q. It was merely a question of was the product unrefined naptha? A. Yes, sir.

"Q. And what was the main question was—the question whether it was finished or unfinished or what?

"The Court: I don't think that is competent.

"Mr. Swacker: Bearing on the question of the representation.

"The Court: Well, the representations speak for themselves. It is in writing. The representations speak for themselves.

"Mr. Diggs: We offer it, if the court please, for the purpose of explaining the meaning that the terms used in the letters already introduced by the Government carried to the mind of this witness.

"The Court: Well, it is not what he understood. That might be if the Frisco was on trial on a criminal offense; they might show their intent, but they are not on trial here now.

"Mr. Diggs: Give us an exception." (S.M., pp. 731, 732.)

"Q. Did the degree of the finishing or refinement enter into the question of what might be shipped on that description?

"By Mr. Payne: I object, the tariff speaks for itself.

"By the Court: The letter speaks for itself too.

"By Mr. Swacker: I except." (S.M. p. 733.)

LXVI. In excluding, upon the objection of the Government, the evidence offered by the defendant of the statute of

the State of Texas passed in February, 1919, which statute prohibits and makes a criminal offense of the calling or designation, for purposes of sale or transportation, of material including that involved in this case either by the name of gasoline or gasoline in conjunction with any other word or words.

LXVII. In sustaining the Government's objection to and rejecting the evidence offered by the defendant through the witness Schock concerning the feasibility of determining by means of distillation curves whether a material will operate a car; said questions, offer and ruling being as follows:

"Q. Now, you were asked, was not allowed to complete your answer with relation to curves, will you explain why it is necessary for you to know what is the curve of the gasoline before you can tell whether it will run a car?

"A. Because the gasoline that will run a car must be made up of a mixture of continuous, or a mixture of substances which will give a rather continuous curve, as we call it, extending from the lowest to the highest, in order that this mixture, when it is sucked or drawn up with the air, drawn through a carburetor, may partly change to a gas, and the remainder be drawn along, a fine mist, as if we use the mixture of lubricating oils and casinghead gasoline, we could have any gravity we wish, and as we drew, used it in the car, particularly with what we might call wild gas product, as we drew air through there we would get a vapor only and a very little mist, because the lubricating oil would be too heavy to be drawn along, the vapor would be too rich, could be easily too rich because the per cent of vapor and air, the upper limit within which no explosion will occur is very low, and if that per cent is easily exceeded, on the other hand the lubricating oils, it would be drawn along——

"Mr. Payne: I object.

"The Court: Yes, I think that is.

"Mr. Swacker: He is speaking of the curves on gasoline composed of the lubricating oils, just to demonstrate that it can be seen by some of the curves that it is impossible to run a car——

"The Court: I don't understand lubricating oils to be in this case.

"Mr. Swacker: No. He is demonstrating why it is impossible to run a car on certain curves in certain instances.

"The Witness: Your honor, will you allow me to explain?

"The Court: No, I think that is going too far.

"A. Well——

*By Mr. Swacker.*

"Q. Now, then——

"Mr. Diggs: Please note our exception." (S.M. pp. 1013-1015.)

LXVIII. In sustaining the Government's objection to and excluding the testimony offered by defendant through the witness Tabor, qualified as an expert, by which the defendant sought to show that casinghead product was comprehended within the scope of the definition given; which questions, offer and ruling are as follows:

"Q. Now, what does Bacon and Hamor say?

"A. Bacon and Hamor say, Vol. 1, page 129, of the work, 'Naptha distillate' (unrefined naptha) as those fractions which boiled up to 150 degrees C under atmospheric pressure.

"Q. That is the same definition as that given by the government in their publication?

"Mr. Chambers: I object to that as asking for a conclusion of the witness.

"The Court: No that is a conclusion.

"Q. That last definition that you have just read likewise comprehended casinghead product? A. It does.

"Mr. Chambers: We object to that as asking for a conclusion of the witness.

"The Court: Yes, that is a conclusion.

"Mr. Diggs: Give us an exception." (S.M. p. 1109.)

LXIX. In sustaining the Government's objection to and refusing to admit Defendant's Exhibit Number 142 for identification, being a bill of complaint filed by the Texas Company against the Texarkana & Fort Smith Railroad Company et al., in the United States District Court, for the Southern District of Texas, wherein said Texas Company sought to recover from the carriers, upon the ground that it had been overcharged, the difference between the rates applicable to gasoline and those applicable to unrefined naptha, on the ship-

ments made by it as to which the indictment alleges said Texas Company suffered discrimination, and the Government offered proof in support of such allegation that the Texas Company had paid gasoline rates on said shipments; said petition being filed with the other exhibits in this case and marked Exhibit Number 142 for identification; and said offer and ruling being as follows:

"Mr. Diggs: Mark that Defendant's Exhibit 142.

"Mr. Diggs: Defendant offers in evidence certified copies of the bill of complaint of the Texas Company against the Texarkana and Ft. Smith Railroad Company, Walker D. Hines, Director General of Railroads, pending in the District Court of the United States for the Southern District of Texas, Texarkana Division.

"Mr. Payne: I object.

"Mr. Diggs: Seeking to recover——

"The Court: Let me see what it is.

"Mr. Diggs: I have a right to make my offer.

"The Court: Yes, but you offer it and I will see what it is.

"Mr. Diggs: I am objecting to the United States attorney jumping in here, which I submit to the court is neither courteous nor an orderly proceeding.

"The Court: Very well, both of you stop.

"Mr. Payne: And has no bearing——

"The Court: Both of you stop.

"Mr. Diggs: Does the court prohibit me from stating——

"The Court: You are offering this as a certified copy giving the style of the case and number of it and I will see what it is and then you can state your grounds.

"The Court: On what grounds do you offer it?

"Mr. Diggs: The Government introduced evidence in this case in chief, showing certain shipments of cars by this company of these railroad companies, the rates of freight paid——

"Mr. Payne: May I interrupt?

"Mr. Diggs: No.



"The Court: Let him make his statement.

"Mr. Payne: May I interrupt a second?

"The Court: No.

"Mr. Payne: Before he makes it. May I have an opportunity to explain?

"The Court: You will be given an opportunity. Proceed, Mr. Diggs.

"Mr. Diggs: Showing the freight received on the cars, as I understand the purpose of the government in offering the proof and the court admitted it was for the purpose of showing nobody else in that section of the country shipped this article by the name we did and it was unknown but that now we offer this record to show that the specific cars mentioned in that evidence, The Texas Company is now seeking to establish to be unrefined naphtha and recover the excessive rate paid; for the purpose of showing the custom of the country and recognition of the term among shippers and producers of the same commodity.

"The Court: Do you object?

"Mr. Payne: Surely we do.

"The Court: Well, do you object? No, just answer the question.

"Mr. Payne: Yes, sir.

"The Court: The objection is sustained.

"Mr. Diggs: Give us an exception." (S.M. pp. 1111-1113.)

LXX. In sustaining the Government's objection to and excluding from evidence Defendant's Exhibits Numbers 143, 144, 145, 146, 147 and 148 for identification, being a bill of complaint filed July 21, 1919, by the defendant against the Texarkana & Fort Smith Railroad and others, in the United States District Court, for the Eastern District of Texas, wherein defendant showed an attempt on the part of the carriers to assess gasoline rates instead of unrefined naphtha rates upon its shipments, and sought an injunction against such course, together with the further proceedings therein, including the injunction pendente lite issued by said court, the demurrer and answer, affidavits, orders and bond in said proceeding, all of which pleadings are filed with the exhibits herein and marked Exhibits Numbers 143 to 148, inclusive, for identification; said offer and ruling being as follows:

"Mr. Diggs: Mark these Defendant's Exhibits 143-144-145-146-147 and 148, if the court please now in offering this I want to say it was offered as a part of the cross examination of the witness in chief and at that time excluded by the court. We now offer the exhibits 143 to 148 both inclusive, being certified copies of the record in the case of the Gulf Refining Company vs. The Texarkana and Ft. Smith Railroad Company.

"The Court: Let me see that.

"Mr. Diggs: Pending in the District Court of Texas solely for the purpose, solely bearing on the motive of the defendant, that is the only purpose we claim they are admissible for, the bearing on the motive of the defendant.

"Mr. Diggs: It has been suggested to me by other counsel that the word 'motive' is not sufficient, so I offer it for the purpose of proving both motive and intent.

"Mr. Gann: The Government objects.

"The Court: On what ground?

"Mr. Gann: On the ground that it is not relevant to the issues in this case, a matter pending in another jurisdiction.

"The Court: Now, what is the last allegation in the indictment? What is the date?

"Mr. Gann: May 16, 1919.

"Mr. Diggs: None of the cars described in that are included in the indictment, I understand?

"Mr. Gann: This proceeding was instituted on July 24, 1919, after the close of the transaction charged in the indictment.

"Mr. Diggs: It is only offered for the purpose of motive and intent.

"The Court: I can understand how, if a suit was filed, that would be evidence then of the good faith where they brought a suit and set it up, but not afterwards.

"Mr. Green: Your honor, you see this was six months before the indictment was returned. We make the point in that way we could be deprived of our defense, because that occurred long before the indictment and being arbitrarily stopped, the indictment might just as well have gone on.

"Mr. Diggs: May I suggest to the court, the

article was shipped; as long as it was delivered to us, we could show no step to show honesty of intention—

“The Court: I will sustain the objection.

“Mr. Diggs: Give us an exception.

“The Court: Very well.” (S.M. pp. 1113-1115.)

LXXI. In sustaining the objection of the Government to and excluding the evidence offered by defendant, of the provisions of Section 4353 of the Revised Laws of Oklahoma concerning the character of material usable as gasoline; which offer and ruling are as follows:

“Mr. Swacker: We want to ask the court to notice, and we introduce as evidence the Oklahoma statute affecting gasoline. Section 4353 of the laws—the Revised Laws of Oklahoma, 1910.

“The Court: I will permit them to go into the record for the advice of the court, not to the jury.

“Mr. Swacker: Our theory—

“The Court: The court takes judicial knowledge—

“Mr. Swacker: You have admitted a good deal of evidence to show the use of words, and I think that is proper evidence in that class, aside from the legal effect.

“The Court: Any objection?

“Mr. Chambers: We object, incompetent, irrelevant and immaterial.

“The Court: You use the word unrefined naphtha—if you had used that word, I would let it go to the jury. I would like to know—

“Mr. Swacker: Most of the evidence has been used on the word gasoline.

“The Court: I will let the word and the term the way it is used gasoline, benzine, naphtha and other easily inflammable liquids of petroleum shall not be tested as flash tests but said fluids shall be tested as to its specific gravity.

“The Court: I will let that part go in.

“Mr. Swacker: The next succeeding part is what we want particularly.

“The Court: That does not go in. These words are not used—

"Mr. Swacker: It is descriptive of the words just preceding.

"The Court: This does not relate to anything—it might be possible that it might be admissible on cross examination of an expert where he was testifying as to specific gravity. That is the only part I will permit to go to the jury for the present. It may be it can be offered later under such shape as might be admissible.

"Mr. Swacker: We, of course, don't want merely the part that has been read without the whole.

"The Court: Very well, I will admit that much. But if you don't want it admitted without all of it, it is not incumbent on you to insist on a part, but I will not let all of it in, but I will let the part that used those terms go to the jury.

"Mr. Swacker: Then may we offer the whole? If I understand the ruling of the court, you will exclude it then?

"The Court: I will permit you to offer this much, and if you don't want any of it unless all—

"Mr. Swacker: That is correct.

"The Court: Then I exclude it. I understand the Government objects.

"Mr. Payne: Yes, sir, we object to that as not bearing on the question in issue as to whether or not this was gasoline.

"The Court: I will exclude it.

"Mr. Swacker: May we save an exception?

"The Court: Yes." (S.M. pp. 1122-1124.)

LXXII. In sustaining the objection to and rejecting the testimony sought to be elicited by the defendant from the witness Dykema on cross examination, concerning commercial products of an ordinary petroleum refinery; said questions, offer and ruling being as follows:

"Q. Now, are you able to state what are the finished commercial products of an ordinary petroleum refinery?

"Mr. Payne: I object.

"The Court: Why?

"Mr. Payne: Because the witness was limited on his examination in chief to casinghead gasoline and he was not allowed to testify in reference to refineries. This is not proper cross examination.

"The Court: I think that is correct.

"Mr. Swacker: He is testifying here as to what is or is not gasoline.

"The Court: You asked though as to what the other products of a refinery were.

"Mr. Swacker: Yes, sir, but he attempted to cover the whole range of petroleum distillation.

"The Court: You made the objection on that and I held him down to it.

"Mr. Swacker: I would like an exception.

"The Court: Very well." (S. M., p. 1251.)

LXXIII. In sustaining the Government's objection to and rejecting the testimony offered by the defendant upon cross examination of the witness Debarr showing that the State of Oklahoma, through its Corporation Commission, does not include the material shipped to defendant as gasoline with respect to taxation and inspection of gasoline; said questions, offer and ruling being as follows:

"Q. Do you know what is the fact what the Corporation Commission of Oklahoma has done with respect to ruling as to whether or not taxes should be paid on this material as gasoline, whether inspected and taxed for gasoline?

"Mr. Chambers: I object.

"The Court: You need not answer that.

"Mr. Swacker: I think it is perfectly proper to show what the use of a term as provided by law, as being construed by the Corporation Commission.

"The Court: That would involve too many issues, all that would have to be before this court. I exclude it.

"Mr. Swacker: Well, may I ask him if it is not the fact that taxes and inspection is not extended to this material, gasoline taxes and inspection?

"The Court: I will not permit that.

"Mr. Swacker: I would like an exception, please." (S. M., pp. 1290, 1291.)

LXXIV. The court erred in admitting over the objection and exception of the defendant, Government Exhibits Numbers 36 to 42, inclusive, and 45 to 56 inclusive, being copies of tariffs on file with the Interstate Commerce Commission,

insofar as said exhibits purport to show anything other than the rates on gasoline from Kiefer, Jenks and Drumright between December 2, 1916, and December 27, 1917, over the routes named in the indictment.

LXXV. That the court erred in permitting the Government's counsel to make improper statements in the presence of the jury to the effect that defendant was in a conspiracy with others to obtain concessions by misbilling; said statements being as follows:

"Mr. Payne: Here is our theory for your honor's consideration, that the Gypsy Oil Company was practically an accessory before the fact in this concession in that they misbilled the shipment.

"The Court: But you haven't got them charged with a conspiracy to violate the law.

"Mr. Payne: Part of the device whereby the Gulf Refining Company got the concession, and thereby they aided and abetted and were in a joint purpose.

"The Court: To my mind I think it is fundamental that that is not competent. If you have any authorities that deal on it I would be glad to hear you, but to my mind that is fundamentally incompetent.

"Mr. Payne: Volume Sixteen of Cyc under the subject of Evidence and Admissions and under the subject of Conspirators and persons acting together, says that where two or more persons are acting together under a common design, that the admission of one are admissions against the others.

"The Court: Well now let me see that.

"Mr. Diggs: Will the court bear with me a minute? I want to object to statements about conspiracy.

"The Court: Oh, they have a right to do that. We haven't time to take that up. You may have an exception." (S. M., p. 199.)

LXXVI. That the court erred in permitting the Government's counsel to attempt to impeach and discredit its own witness, Timmons, in the following respects:

"Q. Does it go from the steam plant into the treating plant? A. Out into the continuous treaters.

"Q. Then what happens to it next?

"A. On into the storage tanks.

"Q. Is it then ready for market? A. No, sir.

"Q. What do you do with it after that?

"A. It has got to be either blended or further refined as you might say.

"Q. Now hold on don't let's anticipate anything.

"By Mr. Swacker: I object to that he is asking the man and the man is answering him as fairly as he can.

"By the Court: Never mind, go ahead.

"Q. After it has gone through the processes you have mentioned the crude still, the steam still and the agitator, what further is done with it in the way of refining?

"A. Well it might be—just depends on what grade I am running—might be further blended.

"Q. Did you do anything else ordinarily? A. No, sir.

"Q. After it has had those three processes?

"A. No, sir.

"Q. What is the purpose of the blend which you might do?

"A. To meet the specifications transported from one oil to another tank to meet whatever specifications I am required to ship.

"Q. Can those specifications be made from the pumping of one tank to another?

"A. Sometimes, sometimes you have to agitate and sometimes blow the tank to get the sample.

"Q. You take a sample from it? A. Yes, sir.

"Q. Naturally you have to do that, to ascertain the contents of it, but aside from this blend, is there anything other that is done to it before you ship it?

"A. As it is in the tank.

"Q. Yes, sir. A. No, sir.

"The Court: Let's make haste. You are taking up lots of time.

"Q. I notice an entry, 'painters naphtha distillate', what is that?

"Mr. Swacker: I object to that.

"Mr. Payne: I will change that.

"Q. What processes are gone through to get painters naphtha? A. The same processes.

"Q. The same processes as the other. That is to say, the oil is refined in the crude stills, steam stills and agitators, and then it is put in a tank and if it meets certain specifications you call it that. What are the specifications



that enables you to determine whether it is painters naphtha? A. By the gravity and color.

"Q. So that your painters naphtha has been through all of your refining processes? A. Some of it has.

"Q. Some of it has. Well now that is a little bit different from what you testified.

"Mr. Swacker: I object to those kind of statements before the jury. He certainly made no such statements at all.

"The Court: I will let the jury determine.

"Mr. Swacker: I would like an exception. I don't think that is proper examination.

"Mr. Diggs: We now ask the court to instruct the attorney for the Government not to make remarks about the nature of the witness' answers.

"The Court: That is not a proper way to examine a witness. The way is to ask him if he didn't say so and so awhile ago. That is the proper way to examine a witness. Proceed." (S. M., pp. 258-260.)

LXXVII. The court erred in stating in the presence of the jury that defendant was making technical objections, giving the implication that the jury would in consequence be unduly detained upon the case for three months; said objections raised by defendant and said statements of the court being as follows:

"Q. You have the original duplicate?

"A. I have the original duplicate of that shipment covered by the same voucher covering the first car B-73, and there is another one there.

"Mr. Gann: I ask to have this identified as Exhibit 30 and offer the same in evidence.

"Mr. Diggs: To which we object as being irrelevant, incompetent and immaterial, and not shown to be issued by the authority of the Texarkana-Fort Smith Railroad Company or signed by any person on its behalf, merely on its face shows to be an instrument, a copy of another instrument which copy is not signed and the rubber stamp appearing on the face thereof not shown to be made by the authority of the railroad company or any of its agents or employees.

"The Court: Have you got the others—offer them together as one exhibit?

"Mr. Diggs: The court overruled my objection?

"The Court: Yes, objection overruled.

"Mr. Diggs: I except.

"Mr. Gann: I offer exhibits offered in evidence—this exhibit is offered in connection with the draft for \$22,826.87, and draft for \$9,193.10.

"Mr. Diggs: I object to the introduction of the said draft as being irrelevant, incompetent and immaterial, because it does not appear said draft has been paid or the amount thereof received by the Texarkana and Fort Smith Railroad Company or any person authorized by it.

"The Court: The objection is overruled.

"Mr. Diggs: I except.

"Q. The freight charges were paid on that car, were they? A. Yes, sir.

"Q. Take the next car, 3104, have you the original duplicate paid freight bill covering car 3104? A. Yes, sir.

"Q. And also the voucher covering that car?

"A. Yes, sir.

"Mr. Gann: I ask that the exhibits be identified. (Which exhibits were marked for identification as Government Exhibits 31 and 32.)

"The Court: Now why don't you wire and get the auditor of this company and get him here and you will get it in much quicker. If they start in on these technical objections I will keep you here three months, and adjourn this jury over. If you start in that I will do that and get it all in here.

"Mr. Diggs: I object to the court stating in the presence of the jury that they are technical objections that we ought not to make.

"The Court: I didn't say you ought not to make them." (S. M., pp. 349, 350.)

LXXVIII. The court erred in stating in the presence of the jury that he believed the defendant was going to insist on technical rules and that he gave it notice that he would require it to toe the law, and upon counsel for defendant objecting to such statements in the presence of the jury as implying that its objections were not authorized by law, although sustained by the court, the court further stated that the objections were only technical and would delay the court and take up time; said objections and statements being as follows:

"By Mr. Diggs: We object to that part of Plaintiff's Exhibit 34 appearing to be a bill or voucher to the Southwest Texas Commercial National Bank for the reason that the same is not endorsed and the J. H. Wilson, it looks like that is his name and he is not shown to be an officer of the Texas Company or is authorized to draw checks and it appears on its face to be for some department agent and not shown that it ever went through the hands of the bank nor was paid by them and I make the same objection to that part of exhibit 34 marked voucher D-522 on the same grounds. I object to that part of the exhibit, Plaintiff's Exhibit No. 34 bearing the number 584 and purporting to be a draft drawn to the order of J. N. Salter and signed by J. C. Countryman as the handwriting of J. C. Countryman has not been shown and it appears to be his signature by another person who is not shown to have any authority to sign his name to the draft nor is the said J. E. Countryman shown to be an officer of the Railroad Company or the said A. R. Bank by whose name it purports to be signed is an officer of the company or has authority to sign the same and I make the same objection to that part of Plaintiff's Exhibit 34, No. 585 being a like draft signed by the same person and for the further reason there is nothing on the face of the said papers to show they have ever been paid except the rubber stamp purporting to contain the name of the Southwest Commercial Bank said stamp not shown to have been affixed by an officer of the bank or an employee having authority to fix the name thereto.

"The Court: Where did you get this voucher?

"A. I got it from our auditor at Houston, Texas, our department agent, he is our auditor, they are in his files in Houston.

"The Court: Now this voucher here, do you know how the South Texas National Bank, are you conversant with the way they handle vouchers and how they mark them paid?

"A. I am conversant with how all banks handle them, and that is marked in the same way, in the usual way as handled by all organizations of that kind.

"Mr. Diggs: We object and ask to have the answer of the witness excluded as being incompetent, irrelevant and immaterial, and tending to show a general custom to which the defendant is not connected, and not being responsive to the question.

"The Court: Very well; objection is overruled.

"Mr. Diggs: We save our exception.

"The Court: Now tell this jury whether or not that draft has been paid.

"Mr. Diggs: To which we object as incompetent, irrelevant and immaterial, because the witness is not shown to have sufficient knowledge.

"The Court: Very well, state whether or not that draft has been paid.

"Mr. Diggs: We save our exceptions.

"A. I stated with all commercial assurance that that draft has been paid.

"Mr. Diggs: We save our exceptions.

"A. I stated with all commercial assurance that that draft has been paid.

"Mr. Diggs: We object and ask that the answer of the witness be stricken, as incompetent, irrelevant and immaterial, and in his answer he states that with all commercial assurance the draft has been paid.

"The Court: Why do you say with commercial assurance it has been paid?

"A. Because it bears evidence of having passed through the usual channels before it reaches the disbursing officer for the final files.

"Mr. Diggs: We ask that the answer of the witness be excluded on the ground it is incompetent, irrelevant and immaterial, and a conclusion of the witness, the fact on which said conclusion is founded not being stated.

"The Court: Now, I believe they are going to insist on these technical rules. I will require you to send and get those witnesses.

"Mr. Gann: I suggest all these exhibits be withdrawn and we re-enter the proof.

"The Court: Very well.

"Mr. Gann: Mr. Reporter, strike from the record all that testimony about those exhibits.

"The Court: Now I will give notice to the defense that you all had better be ready to toe the law.

"Mr. Diggs: We object to the court making the statement in the presence of the jury to counsel for the defendant which implies that they are making

objections not authorized by law, which objections the court has practically sustained.

"The Court: It might be authorized by law but they might be technical objections that only delay this court and take up time. Now we will not discuss it.

"Mr. Diggs: Give me an exception.

"The Court: Gentlemen, you will not consider what the court says when he is dealing with the lawyers in this case. That is a matter the court will take care of and the jury will not consider it in any way whatever for the present." (S. M., pp. 353-357.)

LXXIX. The court erred in permitting counsel for the Government to state in the presence of the jury that defendant made certain misrepresentations which he stated were contained in a letter but not there in black and white but there just the same; said letter being Exhibit Number 97; said statements and ruling being as follows:

"Mr. Payne: We have no objection to the last letter, but we contend that there were representations that the commodity that was being shipped from Kiefer to Port Arthur was the same commodity as was moving between these other points but the fact was that we can show they were entirely different.

"The Court: Get your witnesses here. That representation—where is that representation?

"Mr. Payne: It is in that letter.

"The Court: In this letter, let me see that.

"Mr. Payne: It is not in there in black and white, but it is in there just the same.

"Mr. Swacker: I desire to except to the statements of counsel for the Government, in the presence of the jury, being argumentative, concerning the construction—

"The Court: He is addressing the court.

"Mr. Swacker: I ask for an exception to the statement of counsel for the Government." (S. M., p. 728.)

LXXX. The court erred in denying defendant's motion to strike from the evidence and withdraw from the consideration of the jury the defendant's admission made subject to its

exception concerning shipments of the Texas Company; said admission and motion being as follows:

"By Mr. Diggs: If the court please if you will give me three or four minutes I think we can save three or four days' time in this case. If the court please as to the character of evidence the shipments of the Texas Company sought to be introduced yesterday under certain conditions we think that evidence is immaterial but as we understand the rule in order to be able to move to exclude that evidence after the close of the Government's case we must save exceptions to it as we go along or make an objection to it reserving the right to strike at the conclusion of the Government's case unless the other facts have been shown to make it relevant and material so to cover that feature of the case I have prepared an admission that we are willing to make with respect to count 36 and 81 of the indictment. (Reading) It is admitted by the defendant that the Texas Company shipped to itself at Port Arthur, Texas, over the route of the Midland Valley railroad, the Kansas City Southern and Texarkana & Fort Smith Railway upon the dates, in the cars, the quantities in each such count alleged casinghead gasoline blended about one-third naphtha described in the shipping orders as gasoline and paid the charges for the transportation thereof from Kiefer, and Jenks, Oklahoma, computed at the rates respectively, 33 cents and 39 cents per each hundred pounds and that the commodity shipped from Kiefer was produced by Crosby and Gillespie Company and that from Jenks by the Totum Gasoline Company, this admission is made subject however to the right to move to strike it and have it stricken from the record in the event the Government does not prove by additional evidence facts sufficient to make this evidence relevant and material.

"The Court: What do you say about that?

"Mr. Chambers: I don't know what he means by that last proposition.

"The Court: They admit that for the purpose of the record subject to their right to strike it out on the ground of relevancy and incompetency.

"Mr. Diggs: After the Government closes its case, if the court thinks it is relevant and material, it stands; if the court doesn't think so, it is stricken.

And I want to add to the record that the admission is made for the purposes of this trial only.

"The Court: Yes." (S. M., pp. 387-389.)

LXXXI. The court erred in denying defendant's motion to strike the record and withdraw from consideration of the jury, made upon the completion of the Government's case, and renewed at the end of the evidence, certain evidence admitted over defendant's objection; said motion and ruling being as follows:

"By Mr. Diggs: The defendant moves to strike from the record the admissions heretofore made by the defendant as to the Gulf Oil Corporation owning the stock of the Gulf Refining Company and the Gypsy Oil Company and the Gulf Pipe Line Company of Oklahoma on the ground and for the reason the Government has not made such admissions relevant and material by introducing evidence showing, or tending to show, the dominance and control of the Gulf Refining Company, the Gypsy Oil Company and the Gulf Pipe Line Company by the Gulf Oil Corporation, or that said companies are run and controlled by the same officers, or that a separate corporate existence and independence of each of said corporation is not maintained. The defendant further moves the court to strike from the record and from the consideration of the jury the evidence introduced by the Government, over the objections of the defendant, showing, or tending to show, the method of doing business by the Gypsy Oil Company at its casinghead gasoline plant and the statement of the employees of the Gypsy Oil Company as to the nature and quality of the articles produced, and the evidence showing, or tending to show, that the articles produced were, at the time referred to, as gasoline, on the ground that the same is irrelevant and immaterial in that they are shown to be the acts and declarations performed and made by third persons not under the guidance or control of this defendant; and that no such dominance or control of the Gypsy Oil Company and its employees, by this defendant, has been shown to make the acts and declarations competent evidence as admissions against this defendant; nor has it been shown said acts were performed and statements made in the presence or hearing of this defendant or any officer or agent of this defendant; or



that same were ever made to the knowledge of this defendant under such circumstances and conditions which would make such acts and statements in the presence or hearing of the agents of this company of this defendant evidence against it, and referring particularly to such statements and declarations shown in the evidence by J. H. Reidman, Walter Millard, C. E. Sweet, Frank Ralph, H. W. Morris, Joseph Manson. The defendant also moves to strike from the record all evidence that the Gypsy Oil Company shipped this product, known as casinghead gasoline, south or north before the second day of December, 1916, and shipped same under the name of gasoline, on the ground that said evidence is irrelevant and immaterial as to the guilt of this defendant; and on the further grounds that it does not appear from the evidence of the Government that the product shipped prior to December 2, 1916, was not lawfully shipped and described as provided by the tariff rules and regulations; and on the further ground that said evidence as to this defendant is hearsay; and on the further ground that said evidence cannot be competent and material against this defendant on the ground and for the reason that the Government has not shown that said shipments were made under like conditions and circumstances and subject to the same regulations and laws as to the shipments made after December 2, 1916, and for the same reason and on the same grounds moves to exclude all evidence of shipments north after December 2, 1916; and all admissions of the defendant that the Gypsy Oil Company shipped such products north and south prior to December 2, 1916, and described same as gasoline as being irrelevant and immaterial on the grounds above stated, and no evidence has been introduced by the Government that would tend to make such admissions relevant and material against this defendant; and on the further ground that said evidence and said admissions do not prove, or tend to prove, against this defendant the nature and quality of the articles shipped and could only become competent, material and relevant if the Government had proved the substance shipped to be gasoline. The defendant moves to strike from the record all evidence relating to the Tribes Gasoline Company, the Ajax Gasoline Company, the Akin Gasoline Company, the Monarch Gasoline Company, the Eagle Gasoline Company, the Motor Fuel Company,

Chestnut and Smith Gasoline Company, Oil States Gasoline Company, I don't know whether the name should be Oil States or All States, the Totem Gasoline Company, Crosby and Gillespie Gasoline Company as to how their plants are operated, the nature of the product produced, how such product was billed and sold, the name under which it was produced and sold, the name by which it was generally called and known among the other employees of said companies at the plants producing the same for the reasons and on the grounds that same is irrelevant and immaterial against this defendant and is hearsay, and is 'res inter alios acta'; and on the further ground that it does not prove such usage as would be binding upon this defendant, it not being shown that such facts came to the knowledge of the defendant or even to the knowledge of the Gypsy Oil Company, the defendant being a Texas corporation and it not being shown that it had any business dealings or connection with any of the companies or persons named; and on the further ground that such evidence does not prove and cannot prove or establish a custom in this, that it is not shown to be the general and cover all persons dealing in the article or to include sellers or buyers as well as the employees in the plants, and in this connection particularly moves to strike the evidence of C. C. Waddell, George Anderson, Charlie McCarroll, W. K. Holmes, James Baxtus Saint in such regard. The defendant moves to strike the admission made by it as to the fact of shipments to the Texas Company set out in counts 36 and 81 of the indictment on the ground that same is irrelevant and immaterial and the Government has introduced no evidence making, or tending to make, the facts admitted in such admission relevant and material evidence against this defendant. The defendant moves to strike the evidence of John F. Haich as to the gasoline plants of the Ajax Gasoline Company, Totem Gasoline Company, Jontil Gasoline Company, Kelly Gasoline Company, Swanson and Black Gasoline Company, Texas Company, Oklahoma Petroleum and Gas Company, All States Gasoline Company and Gypsy Oil Company as evidence in regard to the method of the operation of said plants, the nature of the commodity produced by said plants, names by which it was billed and shipped from said plants and what such commodity was generally called by the

employees of said plants on the ground and for the reason that same is irrelevant and immaterial to any fact at issue in this cause, is hearsay as to this defendant, and being transactions, conversations and declarations by parties not connected with the defendant, and not made in the presence of any of its agents or employees and is not evidence proving or tending to prove, that the nature of the commodity shipped to and received by the Gulf Refining Company set out in the indictment was gasoline, and on the further grounds that it appears the practice of said plants that the bills describing and the articles shipped as gasoline was done under the direction of the superior officers of the witness testifying in accordance with the customers of other persons not shown. The defendant moves to strike the evidence of E. J. League as to the nature of the product inspected by him as evidence as to what the product produced by casinghead gasoline plants in the Oklahoma district is called, and the conversation with Mr. Donovan and Mr. Millard as to the nature of the product produced by the Gypsy Oil Company and what they called the product and also moves to strike Government exhibits Number- 58 and 59, being a report of such witness as to the Gypsy Oil Company product; and also moves to strike that portion of the evidence of said witness relating to the the product of the Franchot plant and how such product was commonly known by the employees in the plant on the ground that same is hearsay, irrelevant and immaterial to any issue in this cause being as to this defendant hearsay and transactions between third parties with whom it is not shown this defendant is in any way connected. The defendant moves to strike the evidence of J. S. Scott as to what the employees at the casinghead gasoline plants in Oklahoma called the products produced by them and how such plants billed and described such products and as to the custom of the employees of such plants calling such products gasoline, on the ground that the same is irrelevant and immaterial 'res inter alios' as to this defendant and not being shown to have come to the knowledge of this defendant and on the ground that such evidence is incompetent to prove the nature of the product shipped to and received by this defendant as set out in the indictment; and on the further ground that the alleged custom or usage attempted to be set forth is not shown

to be known to this defendant; and on the further ground that custom and usage is not competent evidence to prove the nature of the product described in the indictment as being shipped to and received by the defendant on the further grounds that the alleged custom is not shown to be general, to the buyer and the shipping public but is confined to certain localities. The defendant moves to strike the evidence of A. W. Bernhart as to the processes of the Franchot plant on the ground that same is irrelevant and immaterial to prove the nature of the commodity which the indictment charges was shipped to and received by the Gulf Refining Company and the nature of such product cannot be proved or established by the practices, customs, usages, acts or declarations of third persons, and with whom this defendant is in no wise connected. The defendant moves to strike Government Exhibits Nos. 66, 68, 69, 86, 87, 88, 95, 97, 98, 100 to 106 inclusive, and also Government Exhibits Nos. 110 to 117 inclusive, and also Government Exhibits 135, 136, 138, 120 to 134 inclusive, 10, 11, 12, 13 and 14 in the tabulated statement checked by witness Otie No. . . . on the ground that said exhibits are irrelevant and immaterial to any issue in this cause and do not prove or tend to prove that the commodity charged in the indictment to have been shipped to and received by the defendant was gasoline and does not tend to prove or disprove that the commodity described in said indictment was not unrefined naphtha, and on the further grounds it is incompetent to prove the nature of the commodity shipped by declarations or practices of third persons. The defendant moves to strike the evidence of J. W. Freeman as to the nature of the product of the Carter Oil Company, its plant at Carterco and by what terms it was described and spoken of, and billed and shipped as being irrelevant and immaterial as to any issues in this cause and not proving or tending to prove the nature of the commodity charged in the indictment to have been shipped to and received by this defendant, and on the further ground that the nature of such commodity cannot be proved or established by acts or declarations of third parties with whom this defendant is not connected. The defendant moves to strike from the record all evidence as to the operation of casinghead gasoline companies in the manufacture and shipment of the commodities produced

by them; and as to all statements of the employees of said companies; as to the nature, quality and physical characteristics of said commodity produced by them and how said product was called and described by the employees of said companies, or by others in the neighborhood of said companies on the grounds that same are irrelevant and immaterial to any issue in this cause, and on the further grounds that same constitutes transactions between third parties and are hearsay as to this defendant, and on the further ground that same is intended to prove the commission of a crime by the defendants by the declarations of third parties without the knowledge of the defendants by showing such third parties called a certain product by a name designated by them without evidence that the product designated by them was identical in its properties, physical and chemical constituents and attributes, to the commodity which the indictment charges was shipped to and received by the defendant; and on the further grounds that such evidence cannot prove the defendant guilty of the crime charged, being the acts, established usages, customs and practices indulged in by third parties.

"Mr. Diggs: As far as the defendant is concerned, if the court please, we are willing that the court reserve its ruling on this until the close of our case. As the court has intimated he would like to hear argument and the whole matter can be presented more consistently, we believe in one argument.

"The Court: Very well." (S. M., pp. 822-832.)

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"The Court: Mr. Diggs, you haven't got your exception in to the motion to strike.

"Mr. Diggs: I want to ask the court to rule on it.

"The Court: You may have a separate exception to each paragraph on your motion to strike that was made the other day, as if each of the motions were made separate, and you may have a separate exception as to each part referred to in your motion.

"Mr. Diggs: Very well." (S. M., p. 1310.)

LXXXII. The District Court erred in denying defendant's motion made after the evidence in the case was closed,

to instruct the jury to return a verdict of acquittal, or to dismiss the indictment:

(a) Because the evidence did not substantiate, but contradicted the charge; the evidence was insufficient to sustain the charge and there was no evidence in support of certain material allegations of the indictment.

(b) Because there was a material variance between the proof offered and the charge of the indictment.

(c) Because the evidence disclosed there was a controversy involving the construction of tariffs as to whether or not casinghead gasoline was embraced within the description "gasoline," as published in said tariffs, or, whether it was embraced within the description, "unrefined naphtha," as published in said tariffs, of which character of controversy the court had no jurisdiction, such jurisdiction resting wholly in the Interstate Commerce Commission.

LXXXIII. The District Court erred in charging the jury upon said trial as follows:

"The allegation is that throughout the period covering all of said shipments that there was established according to the Acts of Congress joint rates and charges for the transportation of certain properties, to-wit: gasoline in tank cars, and as in that behalf required by law, had printed, and had filed with the Interstate Commerce Commission of the United States, and had published their joint schedules and tariffs of rates and charges which said schedules and tariffs of rates and charges, throughout said period showed the joint rate on each of said routes herein referred to for the transportation of gasoline in tank cars between said points over said four routes, to-wit: (1) over the St. Louis, San Francisco Railway Company, Kansas City Southern and Texarkana & Fort Smith Railway Companies between Kiefer, Oklahoma, and Port Arthur and West Port Arthur, Texas, herein referred to as route number one; and over the Midland Valley Railway Co., Kansas City Southern Railway Co. and Texarkana & Ft. Smith Railway Company between the same places and herein referred to as route number two; and over the Midland Valley Railroad Co., Kansas City Southern Railway and Texarkana & Fort Smith Railway Company between the point of Jenks, Oklahoma, and Port Arthur Texas, herein referred to as



route number three; and over the Atchison, Topeka & Santa Fe, Gulf Colorado & Santa Fe Railroad and Texarkana & Fort Smith Railway Company between the points of Drumright, Oklahoma, and West Port Arthur, and Port Arthur, Texas, and herein referred to as route number four. The rate for the transportation of gasoline in tank cars, the rate on gasoline as shown by the tariff sheets introduced in evidence from December 2, 1916, to June 24, 1918, from Kiefer, Oklahoma, to West Port Arthur, Routes 1 and 2, was 33 cents. From Jenks, Oklahoma, to West Port Arthur, Texas, over the route alleged in the indictment, and which is designated here as route No. 3 was 39 cents; and from Drumright, Oklahoma, to West Port Arthur, Texas, over the route as alleged in the indictment which is the route herein referred to in these instructions as route No. 4, was forty cents. From June 25, 1918, to July 28, 1918, over said route between said Kiefer and West Port Arthur, 41½ cents; and over said route between Jenks, Oklahoma, and West Port Arthur, Texas, 49 cents; and over said route between Drumright, Oklahoma, and West Port Arthur, Texas, 50 cents, of course this means fifty cents per hundred weight. From July 28, 1918, to May 31, 1919, over said route between Kiefer, Oklahoma, and West Port Arthur, Texas, 37½ cents; and over said route between Jenks, Oklahoma, and West Port Arthur, Texas, 43½ cents; and between Drumright, Oklahoma, and West Port Arthur, Texas, over said route 44½ cents.

Now as to unrefined naphtha, the rate from December 2, 1916, to February 2, 1917, over said route between Kiefer, Oklahoma, and Port Arthur, Texas, 19½ cents; from February 3, 1917, to May 1, 1917, from Kiefer, Oklahoma, to Port Arthur, Texas, over said route 19½ cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 19½ cents; from Drumright, Oklahoma, to Port Arthur, Texas, over said route 20½ cents; from June 25, 1918, to July 28, 1918, from Kiefer, Oklahoma, to Port Arthur, Texas, over said route 24½ cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 24½ cents; from Drumright, Oklahoma, to Port Arthur, Texas, over said route 25½ cents; from July 29, 1918, to May 31, 1919, from Kiefer, Oklahoma, to Port Arthur, Texas, over said route 24 cents; from Jenks, Oklahoma, to Port Arthur, Texas, over said route 24 cents; and from Drumright Oklahoma, to Port Arthur, Texas, over said route 25 cents."

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The District Court erred in refusing to give to the jury the instructions requested by the defendant in each of the following instances, to-wit:

LXXXIV.

"No. 2.

"You are instructed that you cannot find the defendant guilty under any count in the indictment unless you believe from the evidence, beyond a reasonable doubt, that the commodity which is charged in the indictment to have been shipped to and received by the defendant, was gasoline, and the fact that you might believe from the evidence that the commodity shipped was, and should have been described as liquified petroleum gas, and that such liquified petroleum gas bore the same traffic charge as gasoline, is wholly immaterial to any of the issues in this case, and is not to be considered by you in arriving at your verdict.

"Refused because covered by general charge—See No. 16. Exception saved. R. L. Williams, Judge." (S.M., p. 1523.)

LXXXV.

"No. 3.

"You are instructed that it is not sufficient for you to believe from the evidence that the commodity charged in the indictment to have been shipped to and received by the defendant might have been more accurately, or more appropriately, described or designated as unfinished naphtha, but in order to find the defendant guilty, you must believe from evidence, beyond a reasonable doubt, that the commodity described in the indictment was, as is in said indictment alleged, gasoline, and also must believe, beyond a reasonable doubt, that said commodity was not unrefined naphtha.

"Given in general charge." (S.M., p. 1523.)

LXXXVI.

"No. 4.

"You are further instructed that in order to find the defendant guilty, it is not sufficient that you believe, beyond a reasonable doubt, that the commodity shipped to and received by the defendant is not unrefined naphtha, but you must further believe from the evidence, beyond a reasonable doubt, that such commodity is, as it is charged in the indictment, to be, gasoline.

"Refused because covered in general charge. R. L. Williams, Judge." (S.M., p. 1524.)

## LXXXVII.

## "No. 5.

"You are further instructed that every concession, rebate or discrimination, no matter how honestly granted, made or received, is unlawful, and honesty of purpose or design does not prevent in a civil action or proceeding brought for that purpose, the recovery of the amount of any concession, rebate or discrimination established, and, in addition thereto, in proper cases penalties may be recovered. But, in order, for any claimed rebate, concession or discrimination to be subject to criminal prosecution, in order to constitute a misdemeanor or crime, the rebate, concession or discrimination must be knowingly granted, made, solicited, requested or received. That is, that the thing granted, made, solicited, or received must, at the time of the granting, making, soliciting or reception have been known to be a concession, discrimination or rebate, and have been granted, made, solicited or received as such, and it is the granting, making, soliciting or receiving of the same with such knowledge, that the law defines and punishes as a crime, and the law permits a resort to the criminal courts for punishment only where the guilty knowledge, purpose or design exists to grant, make, solicit or receive a rebate, concession or discrimination.

"Refused as requested. Exceptions saved. Given as amended by me. Exceptions saved. R. L. Williams, Judge." (S.M., pp. 1524, 1525.)

## LXXXVIII.

## "No. 6.

"You are further instructed that upon the question of intent you are to consider carefully and give great weight to the uncontradicted evidence to the effect that the defendant corporation, previous to the time of its indictment, readily accorded full and complete access to its records and affairs to the Government officials investigating the same; and you should bear in mind that such conduct is not consistent with the wilful knowledge and design to obtain a concession or discrimination contrary to law; and as further bearing upon the question of intent, you should give consideration to the fact that the evidence shows undisputedly that the defendant company, at no time, sought to conceal its course or the character

of the material shipped, but instead, even after it was aware of the fact that its acts were the subject of investigation by the Government, continued in its course, which conduct is inconsistent with a guilty intent.

"Refused, exception saved. R. L. Williams, Judge."  
(S.M., p. 1525.)

## LXXXIX.

"No. 7.

"You are further instructed that the fact that the employees of the casinghead gasoline plants of the Gypsy Oil Company spoke of the commodity produced in said plants as gasoline, and that the officers and employees of other casinghead gasoline plants in the neighborhood of the Gypsy Oil Company's plants and Government inspectors spoke of the product of said casinghead gasoline plants as gasoline, is not evidence that the commodity produced by the Gypsy Oil Company and shipped to and received by the defendant as unrefined naphtha was, in fact, gasoline, such statements not being evidence of the nature and character of the product so produced, shipped and received, but such evidence was admitted solely for the purpose of establishing the intent, if any, on the part of the defendant to receive a concession or discrimination in event that you should determine from the other evidence in the case, beyond a reasonable doubt, that the commodity shipped to and received by the defendant, was, in fact, gasoline, and you must first find from the evidence, beyond a reasonable doubt, that such commodity was gasoline, before you consider the fact that said commodity was described by the employees of such casinghead gasoline plants as gasoline.

"Refused. Exceptions saved. R. L. Williams, Judge." (S.M., pp. 1525. 1526.)

## XC.

"No. 8.

"You are further instructed that even if you find from the evidence, beyond a reasonable doubt, that the material or commodity alleged in the indictment to have been shipped to and received by the defendant was not unrefined naphtha, and if you should further find from the evidence, beyond a reasonable doubt, that such material or commodity is gasoline, it is your duty to return a verdict of not guilty, unless you further find from the evidence, beyond a reasonable doubt, that, at the time the defendant received the concession or discrimination

set out in the indictment, it knew that the commodity shipped to and received by it was not unrefined naphtha, and was gasoline; and you must further find, beyond a reasonable doubt, that the defendant had no reasonable grounds for believing, and did not, in fact, believe such material or commodity to be unrefined naphtha, but at the time of receiving said concession or discrimination believed such material to be gasoline and received such concession or discrimination having such knowledge, and with the purpose and design of procuring the transportation of such commodity at rates less than those lawfully published and filed applicable thereto.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., pp. 1526, 1527.)

## XCI.

"No. 9.

"You are further instructed that unless all twelve of you are convinced, beyond a reasonable doubt, that the material could not properly be designated 'unrefined naphtha,' you cannot convict, but must return a verdict of not guilty.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1527.)

## XCII.

"No. 10.

"You are further instructed that unless all of you are convinced beyond a reasonable doubt, that the material shipped was actually gasoline, you cannot convict the defendant, and it is your duty to return a verdict of not guilty.

"Refused. R. L. Williams, Judge." (S.M., p. 1528.)

## XCIII.

"No. 11.

"You are further instructed that if you believe that the material shipped may properly be described as either unrefined naphtha or gasoline, you must find the defendant not guilty.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1528.)

## XCIV.

"No. 12.

"You are further instructed that even though you are convinced, beyond a reasonable doubt, that the material

shipped is actually gasoline, you cannot convict unless you are all convinced, beyond a reasonable doubt, that the defendant knew the material shipped could not properly be described as unrefined naphtha.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S. M., p. 1528.)

XCV.

"No. 14.

"You are instructed that the defendant is not on trial for misbranding or misdescribing the commodity alleged in the indictment to have been shipped to and received by it, but is charged in the indictment with having shipped to and receive by it gasoline, and if you find from the evidence, beyond a reasonable doubt, that the commodity shipped to and received by the defendant was not properly and appropriately described by the name of unrefined naphtha and was not, in fact, unrefined naphtha, still you must find the defendant not guilty unless you further find from the evidence beyond a reasonable doubt, that such commodity was gasoline, and should have been shipped and described as such, and further believe, beyond a reasonable doubt, that defendant knew it to be gasoline, and received the alleged concession, or obtained the alleged discrimination with the intent thereby of procuring the transportation thereof at rates less than those lawfully published and filed applicable thereto; and unless you so believe beyond a reasonable doubt, you must find the defendant not guilty.

"Refused. Exception saved. R. L. Williams, Judge."  
(S.M., pp. 1529, 1530.)

XCVI.

"No. 15.

"You are instructed that before you can find the defendant guilty, you must believe from the evidence, beyond a reasonable doubt, that the commodity shipped to and received by the defendant on the dates set out in the indictment was not unrefined naphtha. You must further believe, beyond a reasonable doubt, that the commodity so shipped to and received by the defendant, as described in the indictment, was gasoline, and you must further find beyond a reasonable doubt that the defendant knew the commodity was gasoline and shipped the same with the intent of thereby procuring a concession or discrimination, and that the said commodity was shipped on the dates and at the times in the indictment set forth, and

received the alleged concession or discrimination, knowing it to be such, and with the purposes and design of thereby procuring the transportation of the commodity described in the indictment at rates less than those lawfully published and filed applicable thereto.

“Refused. Exceptions saved. R. L. Williams, Judge.” (S.M., p. 1530.)

## XCVII.

“No. 16.

“You are further instructed that the sole offense with which the defendant is charged, under the indictment, is in having shipped to and received by it, gasoline at a rate less than the legal rate established for gasoline, and unless you find from the evidence, beyond a reasonable doubt, that the commodity so shipped to and received by the defendant was, in fact, gasoline, it is your duty, and you are instructed to find the defendant not guilty even though you might believe from the evidence that the commodity shipped to and received by the defendant was not unrefined naphtha, but was a commodity which should have been shipped under another name than that of unrefined naphtha, and should have borne a rate equal to the rate lawfully published and filed for the transportation of gasoline.

“Given as a part of general charge. Refused. Except. R. L. Williams, Judge.” (S. M., p. 1531.)

## XCVIII.

“No. 17.

“If you are in doubt whether casinghead gasoline is a product of petroleum oil, you must find the defendant not guilty.

“Refused. Exception saved. R. L. Williams, Judge.” (S.M., p. 1531.)

## XCIX.

“No. 18.

“You are further instructed that unless you believe from the evidence, beyond a reasonable doubt, that the defendant company was not honestly, though mistakenly, of the belief that the material shipped might properly be described as unrefined naphtha, you must find the defendant not guilty; in this connection, you should give great weight to the uncontroverted evidence to the effect that the tariff naming the rate on unrefined naphtha was estab-

lished at the request of the defendant company by the carriers involved upon the defendant company's representations that the product intended to be shipped was an unfinished article, that after publication of said tariff and before its becoming effective, the agent of the defendant company advised the agent of the carriers of the intention of said defendant company to begin shipping its product upon the becoming effective of said tariff under the name of, and at the rate applicable to the description of unrefined naphtha; that the shipping orders of the defendant company covering all the shipments set out in the indictment bore, upon their face, the rubber stamp placed thereon by the defendant company indicating that dome placards had been applied to the cars in conformity with the rules governing the safe transportation of the commodity, which rules required and limited the application of said placards to casinghead gasoline cars; further that said rules governing the safe transportation of explosives provided that the proper tariff name shall be used in describing any commodity subject thereto; that such shipments were subject to regular inspection of agents of the carriers whose duty it was to require that the material shipped be properly described, and to the further circumstance that while the evidence clearly shows that the agents of the carrier were at all times in position to be, and were by the defendant fully informed as to the nature of the commodity shipped, no action was taken by such carriers to question the description adopted by the defendant; in these circumstances, unless you believe, beyond a reasonable doubt, that the carriers deliberately intended to accord to the defendant a concession and discrimination, you must find the defendant not guilty.

"Refused, covered, exception saved. R. L. Williams, Judge." (S.M., pp. 1532, 1533.)

C.

"No. 19.

"You are further instructed that unless you are convinced, beyond a reasonable doubt, by evidence that each of the following circumstances is proved with respect to each count of the indictment, viz.:

"(a) That the shipments therein set forth were made, transported and delivered to the defendant.

"(b) That such shipment was of the weight set forth in each such count;

"(c) That the rates alleged in the indictment as applicable thereto were lawfully published and



filed with the Interstate Commerce Commission of the United States and known to the defendant, or posted at the stations from which such shipments were made;

“(d) That the commodity shipped to the defendant in each of the shipments set forth in each count of the indictment, was, in fact, gasoline;

“(e) That the defendant paid to the carriers transporting such commodity charges for such transportation computed upon rates less than those lawfully published and filed, with full knowledge that such payments were so in fact less.

“(f) That such shipments were made upon the dates and in the cars in each such count alleged;

you must find the defendant not guilty; if you have a reasonable doubt as to the existence of any one of the foregoing facts, you must find the defendant not guilty.

“Refused. Exceptions. R. L. Williams, Judge.” (S.M., pp. 1533, 1534.)

#### CI.

##### “No. 20.

“You are instructed that common carriers may lawfully publish and file special rates applicable to the transportation of particular commodities under particular circumstances lower than those applicable to such commodities under ordinary circumstances, and you must regard the action of the carriers as shown by the evidence, in publishing rates applicable to the transportation of unrefined naphtha, at less than the rates previously applying on gasoline as entirely lawful, and you should draw no inference whatever against the defendant from the fact of its taking advantage of such lawfully published and filed rate on unrefined naphtha, providing you have reasonable ground of belief that that term appropriately comprehends casinghead gasoline blended or unblended, and if you believe such term does appropriately comprehend such commodity, you must find the defendant not guilty.

“Refused. Exceptions saved. Covered by general charge. R. L. Williams, Judge.” (S.M., pp. 1534, 2535.)

#### CII.

##### “No. 21.

“If you are in doubt as to whether the proper name of the commodity shipped *in* gasoline or unrefined naph-

tha, or if you believe that neither of such names is the proper name, but that its proper name is casinghead gasoline, you must find the defendant not guilty; if you believe that the defendant company honestly believed that the commodity shipped could be properly designated as unrefined naphtha, regardless of your own conclusions with respect thereto, you must find the defendant not guilty.

"Refused. Exceptions *served*. R. L. Williams, Judge."  
(S.M., p. 1535.)

### CIII.

"No. 22.

"If you are in doubt whether casinghead gasoline is gasoline you must find the defendant not guilty.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1535.)

### CIV.

"No. 23.

"The act of any officer or agent of the defendant, which may be imputed to it as evidence of guilt, or considered by you as a circumstance from which guilt can be inferred, must be an act done or performed by such officer or agent within the scope of his employment and must be an act done or performed in knowingly receiving, accepting or obtaining a rebate, concession or discrimination.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., pp. 1535, 1536.)

### CV.

"No. 24.

"Only the act of an agent, officer or employee of the defendant done and performed within the scope of his employment, can be imputed to the defendant for the purpose of establishing its guilt, and then only when knowingly done or performed for the purpose of procuring the commodity to be transported in interstate commerce at a rate less than the lawfully published and filed rate, with the intent, by such agent, officer or employee of the defendant obtaining thereby a rebate, concession or discrimination, and after such rebate, concession or discrimination has been obtained or received, no act of an agent, officer or employee of the defendant can be considered by you in determining the intent and guilty knowledge of the defendant, unless it be the act of the agent, officer or employee within the scope of his employment, who pro-

cured the unlawful transportation alleged and obtained the alleged rebate, concession or discrimination.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1536.)

CVI.

"No. 25.

"In order to find the defendant guilty as charged in the indictment, you must find from the evidence beyond a reasonable doubt, that defendant procured the commodity named in the indictment to be transported in interstate commerce over the routes named in the indictment, with the knowledge that it was to be so transported at a rate less than the lawfully published and filed rates fixed for such commodity, with the intention of knowingly receiving a rebate, concession or discrimination, which intention must have continued up to and including the time of the reception of such rebate, concession or discrimination; and, unless you so find beyond a reasonable doubt, you must find the defendant not guilty; and, unless the defendant was guilty at the time of receiving the alleged rebate, concession or discrimination it could not become guilty by any subsequent act of its agents, officers or employees, and the fact that some of its books were subsequently changed or altered, is not evidence of guilt on the defendant, unless it appears that such changes or alterations were made by the agent, officer or employee of the company procuring the rebate, concession or discrimination, and you are instructed there is no evidence showing or tending to show such change or alteration was made, authorized or permitted by any such officer, agent or employee.

"Refused. Exception saved. R. L. Williams, Judge."  
(S.M., p. 1537.)

CVII.

"No. 26.

"You are further instructed that certain evidence has been introduced with reference to changes and erasures of the defendant's records. No evidence has been introduced which shows, or tends to show, that any responsible officer or agent of the company authorized or acquiesced in this action, and you will, therefore, disregard any evidence upon this subject.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1537.)

CVIII.

"No. 27.

"You are instructed that the word, 'refined,' cannot properly be applied to any raw product of nature, but can only be applied to a product whose nature, physical characteristics, or component parts have, in some manner, been altered, changed or added to by the act of man.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1537.)

CIX.

"No. 28.

"You are instructed that distillation is not, under all circumstances, essential to the art of refining, nor is distillation always applied for the purpose of removing impurities from the material distilled, and is often used, not for the purpose of removing impurities, or making the article distilled more pure, but for the purpose of separating the material into its component parts, or some portion of its component part, for the purpose of further treatment, or for the purpose of mixing, blending or combining the same with like or different materials.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1538.)

CX.

"No. 30.

"You are instructed that you cannot consider the evidence relating to the Texas Company paying the gasoline rate at all, unless and until you are convinced, beyond a reasonable doubt, that the material shipped was actually gasoline.

"Refused. Exceptions saved. Partially given. R. L. Williams, Judge." (S. M., p. 1538.)

CXI.

"No. 32.

"You are instructed that the blending or weathering of the product of the plants at Kiefer, Drumright and Jenks for purposes of transportation did not make it a refined product.

"Refused. Exceptions saved. R. L. Williams, Judge."  
(S.M., p. 1539.)

CXII.

"No. 33.

"You are instructed that in order to ship the product

of the plants at Kiefer, Drumright and Jenks it was necessary for the defendant to make it conform to the rules and regulations of the Interstate Commerce Commission and that it was entirely proper for this to be done either by weathering or blending the product to such a degree as to make it conform to the said rules and regulations.

"Refused. Exceptions. R. L. Williams, Judge." (S.-M., p. 1539.)

### CXIII.

#### "No. 34.

"You are instructed that the word 'refine' as used in this case means 'to bring an article to a given standard' and may be accomplished either by adding something to it in the proper proportions, or by taking something from it to the proper degree.

"Refused. Exceptions. R. L. Williams, Judge." (S.-M., p. 1539.)

### CXIV.

#### "No. 35.

"You are instructed that you are not authorized to consider as a refining process anything that may have happened to the casinghead gas below the surface of the earth; in other words, the word 'refine' refers to something that man may have done to the article as distinguished from the processes of nature.

"Refused. Exception. R. L. Williams, Judge." (S.-m., pp. 1539, 1540.)

### CXV.

#### "No. 36.

"You are instructed that the term 'blending' as the same has been used in this case is a process of refining. You are further instructed, however, that the blending of the product of the plants at Kiefer, Drumright and Jenks with sufficient heavy naphtha to make it conform to the rules of the Interstate Commerce Commission did not necessarily make it a refined article. An article may have undergone some of the processes of refining and still be unrefined.

"Refused. Exceptions. R. L. Williams, Judge." (S.-M., p. 1540.)

CXVI. The District Court erred in not giving to the jury, upon its request for further instructions respecting the

safe transportation rules, the following, requested by defendant, or any additional, instructions in reference thereto:

First, that said safe transportation regulations were not rate regulations nor classifications controlling description to be used for rate purposes; second, that the fact that defendant used the description "gasoline" upon shipments where there were no unrefined naphtha rates applicable, should not be taken as an admission against defendant that the proper name of the commodity in question was gasoline, the use of such name by defendant being obligatory in such cases in order to comply with said safe transportation regulations; third, that the fact, admitted by the plaintiff, that defendant at all times complied with said regulations in so far as affixing the "dome cover placard" stamp upon its bill of lading, required and permitted only upon shipments containing casinghead product, and from the time said regulations were amended to provide that such product must be designated under the description "gasoline, casinghead gasoline or casinghead naphtha", the defendant at all times showed upon its bills of lading, in addition to the description "unrefined naphtha" the further description "Casinghead naphtha 1824-K", should be taken into consideration by the jury as evidence that the defendant did not conceal from the carriers the actual nature of the commodity shipped by it.

CXVII. The District Court erred in overruling defendant's motion to set aside the verdict as to each and every count of said indictment and to discharge it or grant it a new trial on account of errors of law committed on the trial of said cause, as follows:

First. On the ground and for the reason that the verdict of the jury so rendered against it, is contrary to law and the evidence.

Second. Because said verdict is against the evidence.

Third. Because said verdict is not reasonably supported by the evidence.

Fourth. For errors of law committed by the court on the trial of said cause, in admitting over the objection of the defendant, incompetent, irrelevant and immaterial evidence.

Fifth. For error of law committed on the trial of said cause in permitting evidence that the employees of the Gypsy

Oil Company, Carter Oil Company, Smith & Chestnut Company, and Crosbie & Gillespie Company, and a large number of other companies, spoke of and referred to the products of said plants as gasoline, over the objection of said defendant.

Sixth. For error of law committed by the court on the trial of said cause in permitting the witnesses, E. L. League, Haigh and others, to testify as to the custom of the employees of casinghead producers and superintendents of plants, with which this defendant was in no wise connected, of speaking of and describing the casinghead gasoline produced at said plants, by the name of gasoline, over the objection and exception of this defendant.

Seventh. For error of law committed by the court on the trial of said cause, in permitting evidence of the fact that casinghead producers with whom this defendant was in no wise connected, shipped and described in their shipping orders and bills of lading, the products of their casinghead gasoline plants, as gasoline, over the objection and exception of this defendant.

Eighth. For error of law committed by the court in permitting evidence to be given that casinghead producers shipped their product over routes and between points other than those named in the indictment, as gasoline, in the absence of a showing that the same was shipped under the identical or similar circumstances, or so shipped and described with the knowledge of this defendant, over the objection and exception of this defendant.

Ninth. The court committed error of law in permitting evidence of the practice of superintendents of casinghead gas plants, and the employees of such plants, as to the manner of shipping and describing the products of such plants, it appearing that said shipments were made to points other than those mentioned in the indictment and made to refineries, over the objection and exception of this defendant, for the reason that said evidence is hearsay as to this defendant, being transactions between persons with whom it was in no way connected, same not shown to be known to this defendant, and not to have been shipped under similar circumstances and conditions under which the products shipped by the Gypsy Oil Company



to this defendant were shipped, and not shown to be shipped over routes and between points where there existed a tariff or rate on unrefined naphtha.

Tenth. For error of law committed by the court on the trial of said cause in permitting to be introduced in evidence, to the jury, over the objection and exception of this defendant, Government's Exhibits numbered 66, 67, 68, 69, 77, 78, 79, 86, 87, 88, 95, 98, 100 to 106 inclusive; and also Government Exhibits numbered 110 to 117 inclusive; also Government Exhibits numbered 135, 136 and 138; also Government Exhibits numbered 120 to 134 inclusive; also Government Exhibits 10, 11, 12, 13 and 14, and the tabulated statement checked by witness Otey, numbered . . . ., on the ground that the same were incompetent, irrelevant and immaterial to any issues in this cause.

Eleventh. For error of law committed by the court in overruling the motion of the defendant to strike from the record the evidence that employees of casinghead gasoline plants in Oklahoma, called the product produced by them, gasoline; and the evidence of A. W. Barnhart, J. W. Freeman and other witnesses named and set out in said motion, showing the practice of the superintendents of casinghead plants, and the employees thereof, calling the product of said plants gasoline, to which action of the court the defendant then and there objected and excepted.

Twelfth. For error of law committed by the court on the trial of said cause in permitting the introduction of that portion of the evidence of the government, which was subsequently stricken out on motion of this defendant, for the reason and on the ground that the same is incompetent, irrelevant and immaterial, and the improper admission of such evidence being prejudicial to this defendant, and to the introduction of which evidence this defendant at the time objected and excepted.

Thirteenth. For error of law committed by the court on the trial of said cause in refusing defendant's motion to instruct the jury to bring in a verdict of not guilty, to which action of the court the defendant at the time excepted.

Fourteenth. For error of law committed by the court on the trial of said cause in refusing the motion of defendant to dismiss said cause on the ground of want of jurisdiction of the court to hear and determine the same, and that it appeared from the evidence in the case that there was involved the construction of the tariffs, and that such construction was necessary in order to determine whether casinghead gasoline was included within the meaning of gasoline, as such word was used in the tariffs, the determination of which question is by law vested solely in the Interstate Commerce Commission, to which action of the court the defendant then and there excepted.

Fifteenth. For error of law committed by the court on the trial of said cause in refusing to instruct the jury that a material variance between the allegations of the indictment and the evidence existed, and therefore the jury should bring in a verdict of not guilty on such account, to which action and order of the court the defendant then and there excepted.

Sixteenth. For error of law committed by the court in permitting the introduction of evidence to the effect that there were rates in force after December 28, 1917, governing the transportation of gasoline, whereas there was no showing that such rates had been lawfully published and filed, or adopted by the Director General of Railroads, in accordance with the statute and the orders of the Interstate Commerce Commission affecting such publication, filing and adoption, to which the defendant then and there excepted.

Seventeenth. For error of law committed in the course of said trial by the attorneys for the government, consisting in improper comment in summing up, to the effect that the United States was pecuniarily interested in the outcome of said trial, and in making improper comments upon the wealth of the defendant, and in making improper comments to the effect that the defendant had violated the safe transportation regulations, notwithstanding the judicial admission of the government to the contrary; this defendant not being on trial on a charge of defrauding the United States, or of violating such safe transportation regulations, and such comment being highly prejudicial and calculated to inflame the jury, and such comment having been excepted to by the complainant.

Eighteenth. For error of law committed by the court in instructing the jury that there were lawfully established, published and filed rates governing the transportation of gasoline subsequent to December 28, 1917, the evidence showing no publication, filing or adoption thereof in the manner and form provided by law, to which the defendant was allowed to except.

Nineteenth. For error of law committed by the court in charging the jury that they could look to the rules and regulations governing the safe transportation of explosives and other dangerous articles for the purpose of determining or assisting them in determining, the meaning of the term gasoline, said regulations being no part of, and having nothing to do with, the rate regulations and classification governing freight rates, to which charge of the court, the defendant was, by the court, permitted to save an exception.

Twentieth. For error of law committed by the court in its general charge to the jury, that articles shipped in Interstate Commerce, should be billed and designated by the name which it is generally called, and if such article is generally used in commerce, its commercial name should be given, and that if an article generally used in commerce, its commercial name should be used, that is, the name by which it is used in commerce. If the article is not an article generally used in commerce and has no commercial name, then the jury should look to its manufacturer and look to those who sell and buy it, to see how it is called, the law being that tariffs named freight rates, are to be strictly construed with respect to the proper technical designation of the article.

Twenty-first. For error of law committed by the court in refusing special instructions of the defendant numbered 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 19, 21, 22, 23, 24, 25, 26, 27, 32, 33, 34, 35 and 36, to which action of the court the defendant then and there did except.

Twenty-second. For error of law committed by the court in refusing to give, as requested, or in substance, special instructions, numbered 2, 5, 13, 16, 18, 20, 29, 30 and 31, to which action of the court the defendant at the time did except.

CXVIII. The District Court erred in overruling defendant's motion in arrest of judgment as to each count of the indictment, upon the following grounds:

1. Because the pretended indictment herein is not a true bill voted by the grand jury in accordance with law, as set forth in defendant's motion to strike the same from the records of the court and its plea in abatement duly filed and forming part of the record herein.

2. Because the matters and things set forth and charged do not constitute an offense against the laws of the United States.

3. Because the averments of each count of said indictment are too general, vague, indefinite and uncertain to inform the defendant of the nature and cause of the accusation against it, or apprise it with such reasonable certainty of the offence with which it is charged or what it may expect to meet on the trial so as to enable it to make its defense.

4. Because the averments of each count of said indictment are so vague, indefinite and uncertain, consisting in the pleader's conclusion as to what constitutes a concession, that the court is unable to say as a matter of law whether the acts of defendant constitute an offense against the United States.

5. Because the admissions of the plaintiff and the uncontroverted evidence show that there is involved a controversy as to the legal construction and application of tariffs, of which character of controversy this court has no jurisdiction.

And as to Counts 36 to 40, inclusive, and 81 to 85, inclusive, because the said counts are bad for duplicity, in that in each of said counts there is attempted to be charged two separate and distinct offenses.

CXIX. The District Court erred in entering final judgment in said cause against the defendant.

WHEREFORE, the defendant prays that the judgment of the District Court against it may be reversed.

JAMES B. DIGGS,

FRANK M. SWACKER,

*Attorneys for Defendant.*

Dated, January 10, 1921.

Endorsed: Filed in open court, Jan. 10, 1921. W. V. McClure, Clerk U. S. District Court, Eastern District of Oklahoma.

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**Order Allowing Writ of Error and Fixing the Amount of Supersedeas Bond.**

Now on this, the 10th day of January, 1921, at Muskogee, in the Eastern District of Oklahoma, came on to be heard the petition of the defendant, Gulf Refining Company, a corporation, for Writ of Error to the United States Circuit Court of Appeals for the Eighth Circuit, said petition being presented at Muskogee to the undersigned Judge of the United States District Court for the Eastern District of Oklahoma. Said petition also asks that an order be entered fixing the amount of security which said defendant will be required to furnish to supersede said judgment until the final determination of the said Writ of Error and the proceedings thereon, and that it be allowed ten (10) days from this date in which to furnish said security, and that pending the furnishing of said security, that said judgment be stayed and superseded for ten (10) days, and on the furnishing of said security, that said judgment be stayed and superseded during the pendency of such proceedings in error, and said defendant, having filed herewith and submitted its Assignments of Error,

It Is Hereby Ordered, Adjudged and Decreed that said petition for Writ of Error be and the same hereby is, in all things, allowed, and that said Writ issue and that citation thereon issue to the United States citing it to appear in the Circuit Court of Appeals of the United States for the Eighth Circuit, at St. Louis, Missouri, on or before sixty (60) days from the date of said citation to show cause, if any it has, why the errors complained of should not be corrected.

It Is Further Ordered, Adjudged and Decreed that said defendant give security in the sum of One Hundred, Twenty Five Thousand and No./100 Dollars, the same to operate as a supersedeas and cost bond, conditioned as required by law, and to be approved by the Judge of this Court.

It Is Further Ordered, Adjudged and Decreed that the defendant have ten (10) days from this date in which to give said security and that the judgment and sentence of this court be, and the same hereby is stayed and superseded during said ten (10) days, and on the giving of said security and the approval thereof, as herein provided, said judgment and sentence of this court shall be and hereby is stayed and superseded until the final determination of said Writ of Error, and

the proceedings thereon be had in the United States Circuit Court of Appeals for the Eighth Circuit.

R. L. WILLIAMS,

Judge of the United States District Court  
for the Eastern District of Oklahoma.

Endorsed: Filed in open court Jan. 10, 1921. W. V. McClure, Clerk U. S. District Court, Eastern District of Oklahoma.

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**Writ of Error.**

United States of America, ss.

The President of the United States of America, to the Honorable Judge of the United States District Court of the Eastern District of Oklahoma. Greeting:

Because, in the records and in the proceedings, as also in the rendition of the judgment of a plea which is in the said United States District Court of the Eastern District of Oklahoma, before you, at the January Term, 1921, thereof, between the United States of America, who was plaintiff in the said cause, and the Gulf Refining Company, a corporation, who was defendant in said cause, a manifest error hath happened, to the great damage of the said Gulf Refining Company, defendant, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 11th day of March, 1921, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this the 10th day of January in the year of our Lord one thousand nine hundred twenty-one.

Issued at office in Muskogee with the seal of the United States District Court of the Eastern District of Oklahoma and dated as aforesaid.

W. V. McCLURE,

Clerk of the United States District Court  
of the Eastern District of Oklahoma.

(Seal)

By WARREN BUTZ, Deputy.

Allowed by me this 10th day of January, 1921.

R. L. WILLIAMS,

Judge of the United States District Court  
of the Eastern District of Oklahoma.

In the United States District Court of the Eastern District of Oklahoma. United States of America, Plaintiff, vs. Gulf Refining Company, a Corporation, Defendant.—No. 3716 Criminal.

### RETURN TO WRIT.

United States of America, Eastern District of Oklahoma—ss:

In obedience to the command of the within writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of the United States District Court of the Eastern District of Oklahoma.

W. V. McCLURE,

Clerk of the United States District Court  
of the Eastern District of Oklahoma.

(Seal)

By WARREN BUTZ, Deputy.

Endorsed: Filed in open court, Jan. 10, 1921. W. V. McClure, Clerk U. S. District Court, Eastern District of Oklahoma.

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### Citation.

United States of America, to United States of America,  
Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty (60) days from and after the date this citation bears date, pursuant to a Writ of Error filed in the Clerk's office of the United States



District Court of the Eastern District of Oklahoma, wherein the Gulf Refining Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Gulf Refining Company, plaintiff in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable ROBERT L. WILLIAMS, Judge of the United States District Court of the Eastern District of Oklahoma, this 10th day of January, A. D. 1921.

R. L. WILLIAMS,

Judge of the United States District Court  
of the Eastern District of Oklahoma.

Service of this citation accepted this the 10th day of January, A. D. 1921.

C. W. MILLER,

United States District Attorney for  
the Eastern District of Oklahoma.

J. STANLEY PAYNE,

Special Assistant to the United  
States Attorney.

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**Supersedeas and Appearance Bond.**

Know All Men by These Presents:

That we, Gulf Refining Company, as principal, and American Surety Company of New York as surety, are held and firmly bound unto the United States of America in the full and just sum of One Hundred Twenty-five Thousand and no/100 Dollars (\$125,000.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 12th day of January, in the year of our Lord, One Thousand Nine Hundred Twenty One.

Whereas, lately at the January Term, A. D. 1921, of the District Court of the United States for the Eastern District of Oklahoma, in a suit depending in said Court between the United States of America, plaintiff, and Gulf Refining Company, defendant, a judgment and sentence was rendered against the said Gulf Refining Company, and the said Gulf

Refining Company has obtained a writ of error from the United States Circuit Court of Appeals for the Eighth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the date of said citation, which citation has been duly served.

Now the condition of the above obligation is such that if the said Gulf Refining Company shall appear either in person or by attorney in the United States Circuit Court of Appeals for the Eighth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute its said writ of error and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Eighth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against it shall be affirmed or the writ of error or appeal is dismissed; and if he shall appear for trial in the District Court of the United States for the Eastern District of Oklahoma on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders made by said Court provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Eighth Circuit; then the above obligation to be void, otherwise to remain in full force, virtue and effect.

Gulf Refining Company,  
By JAMES B. DIGGS, Its Attorney.  
American Surety Company of  
of New York,  
By HARRY C. ASHBY, Atty. in fact.  
By W. LYLE DICKEY, Countersigner.

(Seal)

Approved:

R. L. WILLIAMS,  
Judge of the United States District Court  
for the Eastern District of Oklahoma.

Endorsed: Filed Jan. 13, 1921. W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 5th day of February, A. D. 1921, the defendant filed application for enlargement of time in which to file transcript, which application was granted by the court.

Said application and order enlarging time are in words and figures as follows:

**Application for Enlargement of Time to File Transcript.**

To the Honorable ROBERT L WILLIAMS, Judge of the United States District Court for the Eastern District of Oklahoma:

Comes now the defendant, Gulf Refining Company, in the above entitled cause and shows to this Honorable Court that heretofore, to-wit, on the 10th day of January, 1921, final judgment was entered in said cause, and on said 10th day of January, 1921, the Honorable ROBERT L. WILLIAMS, as Judge of said Court did allow a writ of error in said cause returnable to the Circuit Court of Appeals of the Eighth Circuit of the United States, and on said 10th day of January, 1921, a citation was duly issued on said writ of error to the United States of America returnable within sixty (60) days from the date thereof, to-wit, on or before the 11th day of March, 1921: that under the rules of the said Circuit Court of Appeals a transcript of the record in said cause must be filed in said court on or before the 11th day of March, 1921.

The defendant shows and represents that the record in said cause will cover between twenty-five hundred and twenty-seven hundred printed pages, many of such pages being tabulated statements of figures and reproduction of certain rules and regulations of the Departments of the United States introduced in evidence, containing plats and drawings that are both difficult and which take considerable time for making; that the clerk of the court has given said record to Guyette & Humphry of Muskogee, Oklahoma, for printing and that it will be impossible, in the judgment of this defendant and in the judgment of said printers, to have said record printed in time for filing in the United States Circuit Court of Appeals for the Eighth Circuit on or before the return day of said writ of error, and a citation issued thereon, and that it will take about ninety (90) days in addition to said time to print said record and file the same in the United States Circuit Court of Appeals for the Eighth Circuit.

Defendant further shows that it has exercised diligence in endeavoring to procure the printing of said record in time for filing in said Circuit Court of Appeals on or before the 11th day of March, 1921, and before final judgment was entered in the cause; that it has caused the Clerk of said Court to deliver the indictments, motions, pleas to the indictments and the orders of the court on such pleas and motions to Guyette & Humphry, the printers above mentioned, for the

purpose of having the same printed in order to expedite the printing of said record, and that said indictments, pleas, etc., and so much of the record as was then obtainable was delivered to said Guyette & Humphry and set up in type for printing and printed before the final judgment entered herein, and that the Clerk delivered to said Guyette & Humphry the Bill of Exceptions and all papers in connection with the suing out and granting of the writ of error the day after said Bill of Exceptions was delivered by the Judge of the Court to the Clerk of said United [ ] District Court.

Defendant further shows and represents that this application is not made for the purpose of delay, but because it is necessary to procure an enlargement of time for the filing of said return in order that justice may be done, and that said application is made at this time instead of at a later date for the reason that it understands that the Honorable ROBERT L. WILLIAMS, Judge of this Court will leave the State of Oklahoma on or between the 8th and 10th days of February, 1921, and will not return thereto until on, about or after the 10th day of March, 1921.

Wherefore, defendant prays that it be granted an enlargement of time in which to print and file the record in the above styled case in the United States Circuit Court of Appeals of the Eighth Circuit and that your honor make and enter an order in said cause extending the time for filing said record in said Circuit Court of Appeals to the 10th day of June, 1921.

JAMES B. DIGGS,

Attorney for Defendant, Gulf Refining Company.

Endorsed: Filed Feb. 5, 1921. W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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#### **Order Enlarging Time.**

It is this day ordered, for cause appearing, that the time in which the defendant in the above entitled cause, Gulf Refining Company, may lodge its writ of error, bill of exceptions and transcript in the above entitled cause in the United States Circuit Court of Appeals of the Eighth Circuit be and the same hereby is enlarged and extended for ninety (90) days from and after the 11th day of March, 1921, to-wit, up to and including the 10th day of June, 1921.

R. L. WILLIAMS,

Judge of the United States District Court  
for the Eastern District of Oklahoma.

Endorsed: Filed Feb. 5, 1921. W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 17th day of February, A. D. 1921, the defendant filed its praecipe for printing record, which is in words and figures as follows:

**Praecipe for Printing Transcript.**

To the Clerk of the United States District Court of the Eastern District of Oklahoma:

In the above entitled cause, you will please have printed the following as the record in the cause:

1. Indictment.
2. Plea in Abatement.
3. Motion to Strike Indictment from Record.
4. Demurrer to Plea in Abatement.
5. Demurrer to Indictment.
6. Motion for New Trial.
7. Motion in Arrest of Judgment.
8. Journal Entries, including Final Judgment.
9. Bill of Exceptions.
10. Petition for Writ of Error.
11. Assignments of Error.
12. Order Allowing Writ and to act as Supersedeas.
13. Writ.
14. Citation.
15. Certificate of Clerk.
16. Supersedeas Bond.
17. Petition for Extension of Time.
18. Order Extending Time.

JAMES B. DIGGS,

Attorney for Gulf Refining Company.

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Service of the above and foregoing accepted this the 14th day of February, 1921.

C. W. MILLER,

United States District Attorney,  
Eastern District of Oklahoma.

Endorsed: Filed Feb. 17, 1921. W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

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And, to-wit, on the 7th day of May, A. D. 1921, the defendant filed praecipe for additional papers to be included in the printed transcript, which is in words and figures as follows:

**Praeceptum for Additional Papers.**

To the Clerk of the United States District Court:

In addition to the papers mentioned in former praecipe for preparing record on appeal, you will include in the record the following:

1. Order sustaining motion to strike plea in abatement.
2. Order sustaining motion to strike motion to quash.
3. Order overruling demurrer.
4. Arraignment and plea.
5. Record of trial.
6. Verdict.
7. Motion to set aside verdict.
8. Motion to transfer.
9. Order granting motion to transfer.
10. This notice and agreement as to contents of printed transcript.
11. Certificate of clerk.

JAMES B. DIGGS,

Attorney for Gulf Refining Company.

Notice of the above and foregoing is accepted this 7th day of May, 1921, and I hereby agree that the above and foregoing may be included in the record in the above case as a part thereof the same and to the same extent as if included in the original stipulation herein covering record.

JOHN T. HARLEY,

United States District Attorney for  
the Eastern District of Oklahoma.

By C. C. LYDICK, Assistant.

Endorsed: Filed May 7, 1921. W. V. McClure, Clerk  
U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 21st day of May, A. D. 1921, the defendant made application for additional time in which to lodge record on appeal, which was allowed by the court. Said application and order allowing same are in words and figures as follows:

**Application for Additional Time to File Record.**

The Honorable ROBERT L. WILLIAMS, Judge of the United States District Court for the Eastern District of Oklahoma:

Comes now the Gulf Refining Company, the defendant in the above entitled cause, and shows that it has heretofore se-

cured an enlargement of time for the filing of the record in the above case in the office of the Clerk of the Circuit Court of Appeals of the Eighth Circuit, and that such time expires on June 10, 1921, but that it is informed by the printers to whom the Clerk of the United States District Court gave the preparation and printing of the record in said cause that owing to the printers' strike and trouble raised with their force and the likelihood of greater trouble to come, it will be impossible to complete the printing of the record in time to be filed on June 10, 1921, and that such printers, Guyette & Humphry, of Muskogee, Oklahoma, feel uncertain whether said printing can be completed within sixty (60) days from the 10th day of June, 1921, and said printers have advised the attorney of defendant to such effect and requested him to make this application for extension of time; that this defendant has done everything it could do to expedite the printing of the record in the above case and does not make this application for delay, but because the same is necessary in order to preserve the rights of this defendant and see justice done, and that it is solely owing to labor troubles that it is necessary to make this application.

Wherefore, defendant asks that the time for filing said record in the Circuit Court of Appeals for the Eighth Circuit be extended to and including the 10th day of August, 1921.

JAMES B. DIGGS,

Attorney for Defendant, Gulf Refining Company.

Subscribed and sworn to before me this 20th day of May, 1921. (Seal) Ruth M. Connery, Notary Public.  
My commission expires June 10th, 1924.

Endorsed: Filed in open court May 21, 1921. W. V. McClure, Clerk U. S. District Court, Eastern District of Oklahoma.

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#### **Order Extending Time to Lodge Record.**

It is this day ordered, for cause appearing, that the time in which the defendant in the above entitled cause, Gulf Refining Company, may lodge its writ of error, bill of exceptions and transcript in the above entitled cause in the United States Circuit Court of Appeals of the Eighth Circuit be and the same is hereby enlarged and extended to and including the 10th day of August, 1921.

R. L. WILLIAMS,

Judge of the United States District Court  
for the Eastern District of Oklahoma.



Endorsed: Filed in open court, May 21, 1921. W. V. McClure, Clerk U. S. District Court, Eastern District of Oklahoma.

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**Certificate of Clerk.**

*United States of America, Eastern District of Oklahoma—ss.*

I, W. V. McClure, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *United States of America v. Gulf Refining Company, a Corporation*, Criminal No. 3716, as was ordered by praecipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I further certify that the writ of error and citation attached hereto, and returned herewith, are the original writ of error and citation issued in this cause.

*In testimony whereof*, I have hereunto set my hand and affixed the seal of said court at my office in the City of Muskogee, this *12* day of July, A. D. 1921.

(Seal)

W. V. McCLURE, Clerk.

By *Warren Butz* Deputy.

1677 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

*Appearance of Mr. R. L. Batts as counsel for plaintiff in error.*

United States Circuit Court of Appeals, Eighth Circuit.

GULF REFINING COMPANY,	}	No. 5899.
plaintiff in error,		
vs.		
UNITED STATES OF AMERICA.		

The clerk will enter my appearance as counsel for the plaintiff in error.

R. L. BATTS,  
*Frick Annex, Pittsburgh, Pa.*

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jul. 22, 1921.

*Appearance of Mr. Frank M. Swacker as counsel for plaintiff in error.*

The clerk will enter my appearance as counsel for the plaintiff in error.

FRANK M. SWACKER,  
*120 Broadway, New York, N. Y.*

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jul. 23, 1921.

1678 *Appearance of Mr. James B. Diggs as counsel for plaintiff in error.*

The clerk will enter my appearance as counsel for the plaintiff in error.

JAMES B. DIGGS,  
*Tulsa, Okla., Box 2044.*

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jul. 23, 1921.

*Appearance of Mr. Frank Lee, U. S. attorney, as counsel for defendant in error.*

The clerk will enter my appearance as counsel for the defendant in error.

FRANK LEE,  
*United States Attorney, E. D. Okla.*

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jul. 30, 1921.

*Appearance of Mr. William D. Riter, Assistant Attorney General, as counsel for defendant in error.*

The clerk will enter my appearance as counsel for the defendant in error.

WILLIAM D. RITER.

(Endorsed) : Filed in U. S. Circuit Court of Appeals, May 1, 1922.

1679 *Order of submission.* May term, 1922, Monday, May 1, 1922.

This cause having been called for hearing in its regular order, argument was commenced by Mr. R. L. Batts for plaintiff in error, continued by Mr. William D. Riter, Assistant Attorney General, for defendant in error, and concluded by Mr. Frank M. Swacker for plaintiff in error.

Thereupon, this cause was submitted to the court on the transcript of the record from said district court and the briefs of counsel filed herein.

1680

*Opinion.*

United States Circuit Court of Appeals, Eighth Circuit.

No. 5899.—September Term, A. D. 1922.

GULF REFINING COMPANY, A CORPORATION,  
plaintiff in error,

*vs.*

UNITED STATES OF AMERICA, DEFENDANT IN  
error.

In error to the District Court of the United States for the Eastern District of Oklahoma.

Mr. R. L. Batts and Mr. Frank M. Swacker (Mr. James B. Diggs, was with them on the brief), for plaintiff in error.

Mr. William D. Riter, Assistant Attorney General (Mr. James M. Beck, Solicitor General of the United States, was with him on the brief), for defendant in error.

Before Lewis and Kenyon, Circuit Judges, and Johnson, District Judge.

LEWIS, Circuit Judge, delivered the opinion of the court.

The plaintiff in error (defendant below) was convicted and fined on 99 counts of an indictment charging that it received concessions on shipments of gasoline to its refinery at Port Arthur, Texas, from Kiefer, Drumright and Jenks, Oklahoma, in violation of section 1 of the act of February 19, 1903 (32 Stat. 847), as amended by the act of June 29, 1906 (34 Stat. 587). The shipments were all made By the Gypsy Oil Company between December 2, 1916, and the early part of 1919; but the freight charges were paid by defendant, and it alleged that they were under the lawful rate, the contention being that the difference in amount between the rate on gasoline and what was paid (rate on unrefined naptha) con-

stituted a concession. Prior and subsequent to December 2, 1916, the tariff gave a rate to Port Arthur of 33 cents per 100 on gasoline in tank cars, but on that date a rate regularly established of 19½ cents per 100 on unrefined naptha in tank cars became effective and continued throughout the time covered by all shipments in controversy. There were, then, the two rates between points of origin and destination, one on gasoline in tank cars, the other on unrefined naptha in tank cars, both listed in the tariff under the general heading: "Oils." Prior to December 2 shipments were made at the rate on gasoline, and the commodity was so designated by the shipper, thereafter the same commodity was shipped to Port Arthur at the rate on unrefined naptha, and the commodity so designated. The indictment charges that the commodity shipped was in each instance gasoline; hence, the burden was on the prosecution to establish that the commodity was gasoline—not unrefined naptha. When the trial opened it was stipulated, among other things:

"Throughout the aforesaid period (covering the shipments), and prior thereto the Gulf Oil Corporation was a corporation organized and existing under the laws of the State of New Jersey; that the Gypsy Oil Company was a corporation under the laws of the State of Oklahoma; that the Gulf Refining Company was a corporation organized and existing under the laws of the State of Texas; that the Gulf Pipe Line Company was a corporation organized and existing under the laws of the State of Texas; and during said period all of the capital stock of the Gypsy Oil Company, Gulf Refining Company and the Gulf Pipe Line Company was owned and controlled by the Gulf Oil Corporation, except that the directors of each of the three last mentioned companies held shares in each of said companies sufficient to qualify them as directors."

We gather from the record that the Gulf Oil Corporation has its main office and conducts its principal business at Pittsburgh, Pa., that the Gulf Refining Company owns and operates an oil refining plant at Port Arthur, that the Gulf Pipe Line Company is a carrying company owning a pipe line from the Oklahoma oil fields to the defendant's refinery at Port Arthur, through which crude oil 1682 is carried to the refinery, and that the Gypsy Oil Company owns and operates at Kiefer, Drumright and Jenks what are known as casing-head compression plants, into which natural gas is conducted and its alleged gasoline contents extracted in liquid form by condensation under compression.

The evidence shows that when crude oil reached the refinery at Port Arthur it is put through the distilling process. As heat is applied the competent parts known as the lighter ends vaporize first, and all of them, down to what is called the kerosene cut, when taken off and condensed into liquid form, are technically and commercially known by the generic name of naptha, which embodies gasoline, benzine and naptha. By further distillation those three may be separated, coming off in vapor in the order named for condensation, the naptha part being then designated as heavy, crude or painter's

naptha. A part of this crude or painter's naptha is shipped in tank cars to the compression plants at Kiefer and Drumright. Their product, if exposed, will again become gaseous. Its vapor tension is more than ten pounds to the square inch, and there are restrictions by the Interstate Commerce Commission on its shipment on account of its dangerous character. One of the witnesses testified that if it were shipped and the dome of the tank car in which it was contained were removed at the end of the route it would all escape in the air. The crude or painter's naptha having a gravity around 54, which the defendant shipped to the casing-head compression plants, was for the purpose of mixing or blending with the product of those plants, which served two purposes: the blending reduced the vapor tension, and when that was brought below ten pounds the restrictions on shipment were not so severe, and secondly, the naptha acted as a sponge to the casing-head condensate (commonly known as casing-head gasoline) and prevented to a great extent evaporation. The blending at the two plants was in the ratio of 30 to 35% naptha to 65 to 70% casing-head gasoline. At the Jenks plant another method was pursued. Instead of blending the casing-head gasoline with the naptha the casing-head was exposed and permitted to evaporate until its most volatile parts had escaped; it was then steamed and the vapor tension thus reduced below ten pounds. This was the commodity—blended from two plants and weathered from the other—shipped under the "unrefined naptha" rate, but which the indictment charges to be gasoline.

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1683 Prior to December 2, 1916, the condensates of the three plants and the blended commodity of the two plants were commonly known to and spoken of as gasoline by those employed at the plants. While shipments from the three plants were moving to Port Arthur after December 2 as unrefined naptha, the same commodity was shipped from those plants to the Gulf Oil Corporation at Pittsburgh as gasoline. There was no rate on unrefined naptha to that point. The gravity of casing-head gasoline was around 85, but the blended and weathered commodities had an average gravity of 76. Gravity is said to express the ratio of densities of oil and water at given temperatures. In the oil industry it is of some weight but not a controlling guide to determine the gasoline content, or whether the particular product is gasoline. There are many specifications for that purpose in which there are slight differences, those for aeroplane gasoline, fighting gasoline for bombing planes, gasoline that meets the different tests of different States, etc. All of them give an approximate overpoint, that is, the degree of heat when vaporization begins, and the degree of heat known as the dry point, when vaporization is complete. The uniform requirement is the per cent of recovery. The distillates must equal 95% or more of the gasoline put through the still on a test. Out of 100 gallons at least 95 gallons must be recovered. The highest recovery gotten from the blended and weathered products shipped to Port Arthur was 88%, and it went as low as 76%. Crude naptha is a part of the oil off the crude

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oil as far down as the kerosene cut. The first thing that the defendant does at its refinery is to put the oil in the crude still, and naptha therefrom is the first cut. It is then pumped away to tanks and agitators, and is given a sulphuric acid treatment to remove the impurities. It is known as the naptha fraction and contains gasoline, benzine and naptha. It then goes to the steaming still for the purpose of making various cuts of it. Gasoline is the lightest of the three and comes over first, benzine the intermediate, and naptha the remainder and heaviest cut. Naptha applies to all of them as a body. After the division into gasoline, benzine and naptha the gasoline is given further treatment, and if it does not meet specifications it is necessary to blend it with other refinery products of lower or higher volatility, and sometimes with both. None of the commodity received from

Oklahoma and here in question was ever shipped out from 1684 defendant's refinery in the condition in which it was received.

It was testified that that would be criminally negligent, that it was not fit to be put on the market, too volatile and dangerous, that it had to be refined when it got to Port Arthur by further blending with the still products. A very high gravity gasoline is made at the refinery in the distillation of crude oil, which also is never shipped as gasoline because dangerous, and because it would not meet any specifications for gasoline, and this is always used at the refinery for blending with the commodity that comes from Oklahoma. The commodity as finally treated and blended at Port Arthur and shipped from there to the market as gasoline contains not more than 25% and as low as 5% of what was received from Oklahoma, shipped as unrefined naptha. The remaining 75 to 95% consists of refinery gasoline and painter's naptha, obtained through distillation from the crude oil at Port Arthur. The blending process frequently has to be done the second time. Distillation tests must be made to meet specifications. Compressed air is turned into the tank for thorough mixing, so as to get the distillation tests accurately. The unrefined naptha shipped from Oklahoma has various names among employees at the refinery, such as Kiefer gas, and others. Employees and managers of other casing-head compression plants in Oklahoma testified over defendant's objection as to the products of their plants, that they blended with naptha in various proportions and shipped out the blended commodities to points other than Port Arthur as gasoline, and that one plant shipped its blend to the Texas Company at Port Arthur as gasoline. At some of them the blends ran as high as 75% of naptha, some 50%. There was great diversity in the character and quantity of the material used in blending among the casing-head producers, some used naptha, some kerosene, some fuel oil. The blending would run from 25% to 95% of material other than the casing-head gasoline, and would then be shipped out from these other plants as gasoline. Some of them did not blend but "weathered" (exposed so the lighter ends evaporated) their product below ten pounds pressure, and then shipped the residue as gasoline. Of the blended commodity at Kiefer there was shipped out of the same



X tank one car designated as gasoline, destined to the Gulf Oil Corporation at Pittsburgh, Pa., and another designated as unrefined naphtha to the defendant at Port Arthur. /The defendant's traffic

agent originally asked the carriers for a transit rate on gasoline; that is, he represented that the commodity was to be moved from Oklahoma points to Port Arthur for further handling. He said he wished to move a quantity of low grade naphtha at Port Arthur to Oklahoma points, work it through the plants there, and move it back to Port Arthur and rework it again before it could be put on the market. There was an arrangement of that kind in Toledo, Findlay, and Lima, Ohio. That request was not granted by the carriers. He then asked that they publish a rate on unfinished naphtha from Oklahoma points to Port Arthur. In that connection the railroads considered the decision of the Interstate Commerce Commission in *National Refining Company v. M. K. & T. Ry. Co. et al.* (23 I. C. C. 527), decided May 7, 1912, in which reparation was awarded. The shipments were from Oklahoma points to the complainant's refinery at Coffeyville, Kansas. The carrier charged the rate on refined oil. The commission, in awarding reparation, said that the product seemed to have no distinct commercial designation or trade name, that complainant referred to it as "crude product"; one of the shippers described it in bills of lading as "crude benzine." It was obtained from the crude oil by a skimming process, by which the lighter ends of the oil were extracted and the residue marketed as fuel oil. The skimming process was accomplished by distillation carried just far enough to separate the lighter from the heavier oil, the former amounting to about one-fourth part. The commission held that inasmuch as there was no trade name or commercial designation for the commodity, that they would leave its description to the carrier in the new rate. Attention of the carriers was also called to the fact that one of the connecting carriers had made a rate from Oklahoma points to Baton Rouge on a commodity obtained from crude oil in the same way as in the *National Refining Company* case, designated as unrefined naphtha. The defendant's agent in the light of the foregoing facts asked for a rate on "unfinished naphtha," but the carriers made a rate on the commodity under consideration as "unrefined naphtha." It was testified that the commodity that moved to Baton Rouge was from a skimming plant, and that the naphtha fractions down to kerosene, called the tops off of crude oil, were shipped to Baton Rouge. It and the commodity that went to Coffeyville had no substantial difference from the commodity now under consideration, except they contained no casing-head gasoline. It was shown, and the fact emphasized by the prosecution, that some of the Gulf Refining Company records which showed the receipt of the commodity at Port Arthur in the early part of 1917 described it as "Kiefer gasoline," and that the word gasoline in many instances had been erased and that the books were in that condition when they were presented to the grand jury. It was not shown who kept the books, nor who made the erasures. It was



also shown that the heading on a number of pages listing shipments of the commodity from Oklahoma to Pittsburgh had been cut off, but that letters written to the Pittsburgh office in connection therewith referred to some of the shipments as Kiefer gasoline. These erasures and changes were characterized as admissions and introduced as such. None of the blended or weathered commodity was ever marketed by defendant in the condition in which it was received, as gasoline or otherwise; samples of it were taken and tested on receipt as guides to proper blending with refinery products in making gasoline, losses were much less in the blending process than in distillation at the refinery and the cost was less, and when that could be done it was the method adopted. In rare instances the distillation process had to be used, but that was unusually on account of the fact of the company being in straightened circumstances for certain material, and occasionally a car would be badly off color. Blending is the general practice not only as to the making of gasoline but kerosene, lubricating and other oils. A refinery could not be economically conducted without blending, and it is the general practice at refineries. Not over ten or twelve per cent of the casing-head condensate entered into the final blend at the refinery of the finished gasoline product that was shipped out as such. It ran as low as 5%. It was shipped to Port Arthur to blend with other material. The process is carried on under the direction of skilful men and requires years of experience.

Mr. Taber, vice president of the Gulf Oil Corporation and a resident of Pittsburgh, had been in the petroleum business constantly since 1882. He started the Gypsy Company's compression plant at Kiefer, and had been in general supervision of it ever since. He had read extensively all treatises and literature that could be had on the oil industry. He had originated and given names to many petroleum products. He read critically on request Bacon and Hamor's book entitled, "American Petroleum Industry" before its publication. It is considered a standard work on the subject and is widely used.

He had also revised the manuscript of another text book on 1687 the subject, limited to the refining practice. He had just recently reviewed the manuscript of a book by Hamor and Padgett on the "Evolution of Petroleum and Natural Gas." He had written a good many technical papers on the subject and was a member of societies interested in the study of the petroleum industry. From the beginning it was customary to call the condensed portion of the vapor down to that used for making kerosene or lamp oil, naphtha. That is the generic name applied to the whole product that comes over above the kerosene cut. The U. S. Census Report for 1885 stated that from 100 bbls. of crude oil 15 bbls. of naphtha could be made, and that out of the 15 bbls. about a half-barrel was made into gasoline, the remainder of the 15 bbls. was called naphtha. But later automobiles came so fast and there was such a demand for gasoline that it was necessary to go to the naphtha to get something heavier. It was necessary to make the carburetors so they would

burn the heavy material, and finally the whole naptha product was utilized and prepared and called gasoline. The demand became so great that some kerosene was put in it, and again the carburetors were changed to burn heavier and heavier material, but they still called it gasoline. The automobile business has run away with the petroleum business. People in the crude oil business attempted to keep up with the automobile requirements. In distillation the parts that come off first down to kerosene are called naptha fractions; that is the generic or family name for them. At present gasoline is known as a combination of products of naptha produced from crude oil and made suitable for use in the general run of automobiles which use suction carburetors; not material that will run one make of car but many makes of cars equipped with the ordinary suction carburetor. He was familiar with the product at Kiefer, Drumright and Jenks, does not consider it gasoline but naptha. It will not fulfil any specifications for gasoline; it requires refining to fit it for the market. The Gypsy Company, when it started in business, attempted to market its product direct to customers in the northwest and failed. All sorts of blends with casing-head gasoline are made. Some blend with kerosene, some with heavy naptha. In order to make a gasoline it is necessary to make a different blend than the one used at Drumright and Kiefer. If weathered enough it could be used to run a car, but that process would take off about 70% of it. It might have to be weathered to less than 30% to run a car satisfactorily.

1688 The weathering made at Jenks and the blending at Kiefer and Drumright was to prevent excessive evaporation and reduce vapor tension. It has too much light end. In the refinery business anything which improves the quality of the oil or petroleum produced and fits it for market is considered refining. Blending is a refining process. Casing-head gasoline has too much light end for safety and for use economically. There is excessive loss by evaporation. In the ordinary specification for gasoline you must get back 95% of what you start with. From the unrefined naptha shipped from Kiefer, Drumright and Jenks you would not get back over 88% possibly 80%. Under the specifications of the U. S. Government if you do not have 95% of what you started with it is rejected and refused. You have to make the product comply with that requirement, and the only way to do it is to take off the light end. Different States require different specifications which have to be met. Unrefined naptha is a proper designation for the commodity in question.

Col. Burrell, holds degree of chemical engineer from Ohio University and doctor of science from Wesleyan University; was in the employ of the U. S. Bureau of Mines from 1906 to 1916; 1917 was with the U. S. Army, in charge of chemical warfare service, research division, which had to do with the development of all sorts of gases, etc. There were about 1,500 technical men in the division, and he was at the head. He first discovered the method of finding the real composition of casing-head natural gas. It was known to be a mix-

ture of paraffin hydrocarbons, but it was not known what they were and in what quantities. He has written various publications, bulletins, magazine articles, and technical papers on gasoline, also wrote a book on the subject; belongs to a number of societies engaged in technical research; is familiar with the literature on the subject; is engaged in the operation of an experimental refinery; has built several refineries. He considers blending a refining process, requiring skill and experience to perform it. Many casing-head plants started compression about 1912. Until the art of blending casing-head gasoline with heavier refinery distillates was perfected the product was almost a drug on the market. That made a tremendous amount of natural-gas gasoline available for use as automobile fuel. Naphtha is the light distillate which comes off from crude oil down to the kerosene cut. It is a generic name. He defines gasoline as

an inflammable liquid, a mixture of hydrocarbons suitable for use in any kind of vaporizers. There is a great deal of confusion in the nomenclature of the petroleum industry. The material shipped from Kiefer, Drumright, and Jenks is not gasoline, although it is popularly called gasoline. The name unrefined naphtha is a proper and appropriate description of the material. Gasoline is a wrong name for it. It would be just as appropriate to apply it to the topping or skimming plant material (shipped to Baton Rouge) described by the Carter Oil man. Casing-head gasoline is not usable in an automobile; it is too volatile and vaporizes too rapidly, and there is great loss on distillation. Most gasolines would not lose over 2 to 2½% on distillation test.

Dr. Garner, mechanical engineer, Pittsburgh; of recent years engaged principally in reference to natural-gas gasoline recovery; has university degree; now in Mellon Institute of Industrial Research at Pittsburgh. Gasoline in the strict sense is that low boiling portion of naphtha having a gravity from 76 to 82 and usable for the purpose of illumination. It is also used as a term applicable to products of petroleum to be used for vaporization purposes. It is a product of the naphtha fractions of crude oil. Used as a commercial term or article of commerce, it is not considered gasoline unless it can be used for vaporization purposes, such as running a car or gasoline stove. The product shipped from Kiefer, Drumright, and Jenks to Port Arthur is not gasoline in any proper sense of that word. Unrefined naphtha describes that commodity very accurately. About 96% of all the material used and called gasoline is used in internal-combustion engines with suction carburetors. Practically all of them are blended.

Dr. Schock, chairman School of Chemistry and Mechanical Engineering, University of Texas. In defining gasoline we must consider its use and take that as the basis for a definition. It is most used in the ordinary automobile. It is primarily obtained from petroleum. What we use to-day and call gasoline is not identical with the material that was called gasoline years ago; it was more volatile than the present gasoline. It is a liquid, volatile, inflammable, but

so made up, and is a mixture of a number of substances in such proportions, that a part only will volatilize when air is blown through it, as is done in the ordinary automobile carburetor. The amount

thus changed to strict gaseous form must not be very large. 1690 There is a degree of interchangeability between the words "gasoline" and "naptha," but it is a little one-sided. All gasoline can be called naptha; that is, it is a product of naptha. The word "gasoline" designates the naptha of certain properties, whereas the word "naptha" designates any volatile inflammable liquid hydrocarbon mixture. He was familiar with the product shipped from Kiefer, Drumright, and Jenks to Port Arthur; it is not gasoline; it is appropriately described as unrefined naptha. The words "unrefined naptha" would also embrace such material as a topping or skimming plant produces. A material that will begin to distill at least as low as 140 deg. F., that will distill 20% at least at 221, that will distill 45% at 275, and that will distill at least 90% at 356, and dry point not exceeding 428, and a minimum recovery of 95%, will run a car. The initial boiling point might be as low as 100. Gasoline that will run a car must be made up with a mixture of substances which will give a rather continuous course, extending from the lowest to the highest, in order that the mixture, when it is sucked or drawn through a carburetor, may partly change to a gas and the remainder be drawn along in a fine mist. By using a mixture of lubricating oils and casing-head gasoline any gravity may be obtained, and as it is used in the car, drawn through air, we would get vapor only and a very light mist because the lubricating oil would be too heavy to be drawn along. Gravity is not a guide.

Witness Miller, a petroleum refiner and consulting engineer, for a while manager of the refining department of Cosden & Co., handled millions of gallons of casing-head products from compression plants; is familiar with still-gas produced by the distilling process at refineries. If it is not condensed into a liquid by the compression or other process, as may be done, it escapes into the air; if condensed it is to a certain extent analogous to casing-head gasoline. It is not a finished product, it must be blended or weathered. Is familiar with the material shipped from Kiefer, Drumright and Jenks to Port Arthur; it is not suitable for gasoline and he does not consider it gasoline. Gasoline is that fraction of crude petroleum lying within the range of boiling points and other necessary points which will satisfactorily and economically operate an internal combustion motor. This material will not do that; it must be blended with products of crude oil in such proportions as to bring the material to the point

where it will operate an internal combustion motor satisfactorily and economically, and blending is the most economical method of bringing it to that point. It can be done by excessive weathering or by distillation, but the weathering required for that purpose would result in a loss of 60 to 75% of the original amount. The percentage of casing-head in the final blending should be kept down to 3 to 5% of the total mixture, according to his ex-

perience, both with Pierce Oil Company and Cosden refinery. There are few refineries that use more than 10% of the casing-head product. Naptha is a generic term which describes that fraction obtained by the distillation of crude oil before the product kerosene is reached. The process of blending is a process of refining. The material shipped from Kiefer, Drumright and Jenks to Port Arthur is properly designated by the name of unrefined naptha. It might also be appropriately called unfinished naptha or unfinished gasoline blend, or unrefined casing-head blend, or unfinished casing-head blend. Unrefined naptha will embrace any naptha which is not ready for use, not completely refined; it will embrace materials referred to as tops. It would not be possible in this day for a refinery in the production of gasoline to operate successfully without blending as part of its process. There is great confusion and misuse of names. The names of the finished product are frequently applied to the materials which ultimately become such product. It is not a practical thing to blend casing-head at the plant to a finished marketable condition, to do that you would have to bring to the casing-head plant 90 to 95% of other refinery products, or locate the refinery at the casing-head plant, and as the well was exhausted move the refinery. Blending is for the initial point, for end points, for gravity; not for one point but anywhere from 5 to 14 points, including various distillation points in the curve, also to meet the various specifications, and it requires considerable experience and an intimate knowledge of the products used.

Dr. Bacon, chemist, holds master and doctor degrees; in Government service until 1911; since then in the Industrial Research Department University of Pittsburgh, now Mellon Institute; was Colonel on General Pershing's staff in France and in charge of chemical work for one year; member of technical societies. One of the authors of Bacon and Hamor on American Petroleum Industry. Has written a large number of papers for scientific journals; made a large number of tests of various kinds of petroleum products; his studies have embraced casing-head gasoline. The material now sold as gasoline was not manufactured prior to the advent of the automobile. Crude oil was then run into other products. The material shipped from Kiefer, Drumright, and Jenks to Port Arthur is not gasoline. Gasoline is a mixture of combustible liquids, a finished product that will satisfactorily run a motor car. The automobile industry has dominated the petroleum industry so that demand for oil has been almost entirely in the direction of gasoline; 90 to 95% of it is used for running automobiles. Naptha fractions of petroleum include all fractions from the beginning up to illuminating oil. Gasoline now contains portions of the crude heavier than the naptha fractions were a few years ago. In the early days when kerosene or lamp oil was wanted the naptha fractions were exceedingly narrow, but now they are made as wide as can be. The term gasoline is loosely applied to the material from which the finished product is to be produced. We speak about boiling point,

Baume gravity and distillation curves; that is one way to look at these things and state that it is a satisfactory gasoline; but the thing behind all this is the actual work. We try it in an engine and if we find it performs satisfactorily it is gasoline; then we make these boiling points and Baume gravity, etc. We have a gasoline engine in the Mellon Institute which is connected up with an apparatus to register the power it develops. Have tested on that machine a very large number of gasoline materials. Then we make gravities and initial points and end points and get the curve of the gasoline, which we know is good gasoline because we worked it out in the engine; then if we get a new gasoline we could probably tell from its boiling points and its curve as to whether it also would be satisfactory gasoline. The thing we do is done in all scientific institutions. We not only test the gasoline in the engine where we can measure the horsepower but we get several different kinds of cars and drive them over the roads near Pittsburgh and see how they perform. I have tested the material commonly called casing-head gasoline; it did not make the engine run at all. Once in awhile you get one that will make the engine run in very unsatisfactory manner. It has very little power and the consumption will be very high; it will spit and misfire, and things of that kind. Dr. Garner and he made distillation curves of this casing-head gasoline and of this blended product, and

they indicate that neither would run a car; they are not 1693 gasoline. Naptha is a term used for any low boiling product of petroleum which boils below the illuminating oil fraction.

[ The blending process is a part of refining. Casing-head can be weathered down to a point where it would run a motor car, but not in a way very satisfactory. It was shown that Bacon and Hamor used the term unrefined naptha, and a Government publication on the chemical properties of California petroleum issued in 1914 uses that term, the term comprehends casing-head gasoline. The witnesses Burrell, Bacon, Garner, and Schock all participated in testing casing-head gasoline and the blended product at the Jenks and Kiefer plants on Packard and Dodge motor cars during the trial, and all testified that the experiments were failures.

+ The prosecution then called W. P. Dykema, graduate Michigan College of Mines in 1905, mining engineering from 1905 to 1909, then did surveying and general engineering in the California oil fields, then returned to silver and copper mining, then in the city engineer's office of Los Angeles until August, 1915, then employed by U. S. Bureau of Mines until March, 1920, and now consulting petroleum engineer; devoted most of his time since 1915 to study of casing-head gasoline, visited plants throughout the country, has written Government bulletins on compression and refrigeration of natural gas published by the Bureau of Mines, petroleum division. Any liquid made from natural gas by compression would in his opinion run a car, that even the lightest product would be good motor fuel; had ridden in cars run by gasoline from compression plants; does not consider compression a refining process; thinks the product



was already refined because it needs no purification. It is commonly known as gasoline in the trade and scientific world; never heard it called unrefined naphtha before, that name is not appropriate; it is misleading in that it would need further refining and purification; it is fit for use as it is and is marketable as it is. The process of blending is not refining; it might be termed a finishing process. He defines gasoline as the lighter petroleum distillates fit for use in an automobile. Said it was not dangerous in the hands of anyone who could use it with reasonable caution, but more dangerous than curb gasoline and would not give equal power per gallon. The fractions, including gasoline, have for a long time been called by the generic name of naphtha. Naphtha embraces all gasoline. Naphtha fractions, after they have been separated in distillation, can be properly  
1694 called unrefined naphtha; they are the light ends of petroleum which need further refining. Part of it is then cut out for gasoline fractions. Refineries are large purchasers of raw casing-head and blended casing-head gasoline. He did not know what they did with it. The attention of this witness was then called to the bulletin of which he was the author, published by the U. S. Bureau of Mines in 1918, entitled: "Recovery of Gasoline From Natural Gas by Compression and Refrigeration," and this excerpt therefrom seems to nullify his testimony that casing-head gasoline is a good or suitable motor fuel:

"Condensate produced by compression is also an undesirable fuel for gasoline engines. It is exceedingly volatile, which causes losses in handling, is dangerous because fumes are easily formed, and gives less power as compared with equal volumes of heavier distillates, a larger number of gallons being required to develop the same power. It gives a quick, sharp explosion in a motor cylinder, but seems to lack 'push' after the explosion has taken place."

The bulletin later on treats rather fully of the methods of blending, and among other things says:

"Some blending companies use with the usual naphthas small quantities of straight still-run gasoline in order to increase the proportions of those hydrocarbons of which the naphtha and the condensate contain only small percentages."

It points out that the products of different casing-head plants are different, even those in the same field; that the gases they treat are different and that each must be separately considered and studied in order to know the percentages of the various hydrocarbon fractions in the casing-head gasoline. He also participated in the test of the casing-head gasoline and of the blended commodity with two automobiles during the trial, and considered the test fairly successful as to the car in which he rode; said that he thought the trouble they did have with it could have been avoided if the carburetor had been adjusted.

Dr. DeBarr, vice president Oklahoma State University and head of department of chemistry, holds bachelor and doctor degrees; said that casing-head gasoline is not properly denominated unrefined



naptha, that it is not refining to blend casing-head gasoline with naptha because both products are refined before they are put together; had used casing-head gasoline in a motor car, drove a Ford several hundred miles on compression gasoline, and a Dodge roadster a week or two with nothing but casing-head compression gasoline. The end point would need to be regulated for use by common people in its volatility, but for a man like himself it need not be regulated; that his knowledge would not entitle him to any protection with regard to volatility but the general public needs protection; he would not let his wife run it unless she learned how to use it. Its boiling points are not the proper boiling points and it is not economical motor gasoline. There is both interchangeability and confusion in the use of the names naptha and gasoline; extreme confusion as to the material more properly called gasoline. If the lighter as against the heavier hydrocarbons are too great the car will not run, and vice versa. Many writers call all of the hydrocarbons that are lighter than kerosene naptha, when derived from crude petroleum. Thinks the term unrefined naptha originated with a Bureau of Mines publication and circular, either there or with Bacon and Hamor.

Throughout the trial, during introduction of evidence and in argument, the prosecution insisted that the conduct of the defendant was fraudulent. One of the grounds of this insistent was the fact that the defendant's traffic agent asked for the rate on unrefined naptha, a commodity which had theretofore been and was then being shipped as gasoline to Port Arthur; but in the light of the ruling of the Interstate Commerce Commission in the National Refining Company case, the rate on unrefined naptha theretofore given by one of the carriers to Baton Rouge on a commodity shown to be substantially the same as the condensate of the Gypsy Company's plants, and the testimony in this case, we think the insistence groundless and must have been highly prejudicial. Another fact relied on and pressed upon the attention of the jury was that the same commodity was shipped to Pittsburgh by the Gypsy Company as gasoline after December 2, 1916, while shipments were being made to Port Arthur as unrefined naptha, and its effect upon the jury cannot be doubted, but we think this entirely without evidentiary weight in view of the further fact that there was no rate on unrefined naptha to Pittsburgh. Another error assigned is that testimony was admitted over objection showing that the casing-head gasoline and blended product at other casing-head compression plants in Oklahoma were called gasoline and shipped as gasoline, without a showing that they were substantially similar to those of the Gypsy Company, and in the face of proof that they were not of a uniform blend with those of the Gypsy Company but contained, in some instances, as much as 75% naptha. It is also assigned as error that counsel for the prosecution stated in his argument to the jury that the Mellon Institute at Pittsburgh was founded by the Mellon family, and that Mr. Mellon is president of the Gulf Oil Corporation. The

court said there was no evidence of that kind in the record. This statement could have been made for no other purpose than to prejudice the jury against Dr. Bacon and Dr. Garner, witnesses for defendant. Counsel also stated to the jury that during the time part of the shipments were made the Government was operating the railroads and that it had guaranteed the revenue of the railroads, and that the jury would have to contribute to make up any deficiency in that revenue, that the defendant, by the advantage that it got over its competitors in this way placed in its "own pocket hundreds of thousands of dollars which they were not entitled to and which the people of the United States have got to bear the burdens, and it is true that the Gulf Refining Company will have to join, thank goodness, the other people of the United States to pay these things if it had to be paid." On objection the jury was instructed to ignore the statements. All of the assignments that have been mentioned are in our judgment meritorious, the matters complained of were prejudicial and would require a reversal. Many errors are assigned, to the admission and rejection of evidence, to the instructions of the court, to the refusal of requests to instruct, and to comments by the court during the progress of the trial, which it is claimed were prejudicial and unfair. But the view we take of the case renders it unnecessary to pass on them.

It is our opinion that when all competent and relevant proof in the case is given a fair and impartial consideration the conclusion that the verdict is without support is inevitable. The prosecution rested its case in chief on testimony of operators of casing-head compression plants that they called the condensate and their blended products gasoline, believed they were gasoline and shipped them as gasoline; and also on the claimed admissions about which we have expressed our opinion. They could not ship their products otherwise,

there was no rate on unrefined naptha or unfinished naptha to their points of destination; and as to the shipments to the Texas Company at Port Arthur, on which gasoline rates had been exacted and collected, that company had pending in the U. S. District Court for the Eastern District of Texas at the time of the trial an action for the recovery of the difference between what it had been required to pay and the rates on unrefined naptha. The defendant then called witnesses thoroughly familiar, technically and practically, with the recovery of petroleum and natural gas, their treatment, their component parts, their reduction to usable and marketable commodities, and they were in accord in their testimony that the commodities were appropriately designated as unrefined naptha, were unrefined naptha and were not gasoline, and could not be appropriately so designated. They stated the facts on which their conclusions were based. Then the best informed witnesses in behalf of the prosecution, the only ones who spoke with general information on the subject, Dr. DeBarr and Mr. Dykema, were called and both stated that casing-head condensate was too violatile and dangerous for use as gasoline—the former as a witness and the latter in his

article prepared and issued as an official bulletin by the Bureau of Mines; and neither claimed that either the condensate or the blended  
y product would fulfil any specification for gasoline.

We think the court erred in refusing defendant's request for an instructed verdict in its favor.

Reversed and remanded.

Filed September 11, 1922.

1698

*Judgment.*

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1922.

Monday, September 11, 1922.

GULF REFINING COMPANY, PLAINTIFF IN ERROR,

*vs.*

UNITED STATES OF AMERICA.

No. 5899.

In error to the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed without costs to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said District Court with directions to grant a new trial.

September 11, 1922.

1699 *Application of defendant in error for extension of time to file petition for rehearing.*

[Telegram.]

WASHINGTON, D. C., Nov. 4-22.

E. E. KOCH,

*Clerk Ninth Circuit Court of Appeals, St. Louis.*

Because of important bearing of the decision in Gulf Refining Co. versus United States on reparation claims which may amount to several million of dollars the Interstate Commerce Commission is exceeding anxious that the government file a petition for rehearing Stop We did not obtain copy of opinion until short while ago Stop Will you therefore please ask Court for an order extending time until Dec. first to file rehearing petition.

DAUGHERTY.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 4, 1922.

*Order extending time to file petition for rehearing until December 1, 1922.*

September term, 1922.

Tuesday, November 7, 1922.

Upon application of the Attorney General of the United States, in behalf of the defendant in error in this cause, and for good cause shown, It is ordered by this court that the time for filing a petition for a rehearing herein be, and the same is hereby, extended until December 1, 1922, and that the issuance of the mandate of this court be, and the same is hereby, stayed pending the filing of said petition and if filed the issuance of the mandate will then be withheld until said petition has been acted on.

NOVEMBER 7TH, 1922.

*Petition of defendant in error for a rehearing.*

*To the honorable the United States Circuit Court of Appeals for the Eighth Circuit and the honorable Judges thereof.*

The United States of America, defendant in error in the above-entitled cause, does most respectfully petition for a rehearing upon the writ of error in said cause and to that end does move said court to set aside and vacate the rulings and orders heretofore made in said cause reversing the judgment of, and remanding said cause to, the said District Court of the United States for the Eastern District of Oklahoma, and does further petition and pray that the said writ of error be further considered by this court, with leave to the defendant in error to further argue and present the same, and that upon a re-submission of said writ of error for decision the said judgment of said district court be affirmed.

And defendant in error respectfully submits the following grounds in support hereof:

1. The evidence in the case was sufficient to require submission of the case to the jury.
2. The evidence in the case supported the verdict.
3. The evidence in the case shows that plaintiff in error was guilty, as charged, beyond a reasonable doubt.
- 1704 4. There was no prejudicial error in the admission or rejection of evidence.
5. The statements made by counsel for the Government in their argument to the jury were not improper and did not constitute reversible error.

6. No error prejudicial to the plaintiff in error, requiring reversal, was committed by the trial court.

Respectfully submitted.

JAMES M. BECK,  
*Solicitor General,*  
WILLIAM D. RITER,  
*Assistant Attorney General,*  
J. STANLEY PAYNE,  
*Special Assistant to United States Attorney,*  
*For the United States.*

Washington, D. C., November 23, 1922.

*Certificate of counsel.*

We hereby certify that in our opinion the attached petition in behalf of the United States of America for rehearing in Gulf Refining Company, plaintiff in error, *vs.* United States of America, defendant in error, case No. 5899, is well founded in point of law, and we further certify that said petition is not interposed for delay.

(Signed) WILLIAM D. RITER,  
*Assistant Attorney General,*

(Signed) J. STANLEY PAYNE,  
*Special Assistant to United States Attorney,*  
*For the United States.*

1702 Dated at Washington, D. C., November 29, 1922.

Subscribed and sworn to before me this 29th day of November, 1922.

[SEAL.]

GRACE MURPHY,  
*Notary Public.*

(Endorsed) : Filed in U. S. Circuit Court of Appeals, Nov. 27, 1922.

*Order denying petition for rehearing.*

December Term, 1922. Tuesday, January 16, 1923.

This cause came on this day to be heard upon the petition for a rehearing, filed by counsel for defendant in error.

On consideration whereof, it is now here ordered by this court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

January 16, 1923.

1703

*Clerk's certificate*

United States Circuit Court of Appeals, Eighth Circuit

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript composed of two volumes, Volume I consisting of pages 1 to 950, inclusive, and Volume II consisting of pages 951 to 1702,

inclusive, contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed, and certified by the clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the act of Congress approved February 13, 1911, and full, true, and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the Gulf Refining Company, a corporation, was plaintiff in error, and the United States of America was defendant in error, No. 5899, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the thirty-first day of January, A. D. 1923, a mandate was issued out of said Circuit Court of Appeals in said cuase, directed to the judges of the District Court of the United States for the Eastern District of Oklahoma.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this tenth day of April, A. D. 1923.

[SEAL]

E. E. KOCH,  
Clerk of the United States Circuit Court  
of Appeals for the Eighth Circuit.

1704      In the Supreme Court of the United States  
October term, 1902

UNITED STATES, PETITIONER,  
v.  
GULF REFINING CO., RESPONDENT. } No. 994

*Stipulation as to return to writ of certiorari.*

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writ of certiorari granted therein.

WM. J. HUGHES,  
*For the Solicitor General.*  
JAMES B. DIGGS,  
*Counsel for Respondent.*

**June 29, 1923.**

(Endorsed): U. S. Circuit Court of Appeals, Eighth Circuit, No. 5899. Gulf Refining Company, plaintiff in error, vs. United States of America. Stipulation as to return to writ of certiorari. Filed July 10, 1923, E. E. Koch, clerk.



1705 UNITED STATES OF AMERICA, ss:

*The President of the United States of America to the honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:*

Being informed that there is now pending before you a suit in which Gulf Refining Company is plaintiff in error and The United States of America is defendant in error, No. 5899, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Eastern District of Oklahoma, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-third day of June, in the year of our Lord one thousand nine hundred and twenty-three.

WM. R. GRANSBURY,

*Clerk of the Supreme Court of the United States.*

1707

*Return to writ.*

UNITED STATES OF AMERICA,

*Eighth Circuit, ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Gulf Refining Company, plaintiff in error, v. United States of America, No. 5899, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause as mentioned in the certificate thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this thirteenth day of July, A. D. 1923.

[SEAL]

E. E. KOCH,

*Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.*

(Endorsed:) File No. 29544. Supreme Court of the United States, No. 994, October Term, 1922. The United States of America vs. Gulf Refining Company. Received July 17, 1923. Office of the clerk, Supreme Court U. S. Writ of Certiorari. Filed Jul. 10, 1923. E. E. Koch, Clerk.

1708 (Endorsed:) File No. 29544. Supreme Court U. S., October term, 1922. Term No. 290. The United States, Petitioner, vs. Gulf Refining Company. Writ of certiorari and return. Filed July 17, 1923.

*End*  
○





# In the Supreme Court of the United States.

OCTOBER TERM, 1922.

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UNITED STATES OF AMERICA, PETITIONER,	} No.—
v.	
THE GULF REFINING COMPANY, A CORPORATION, respondent.	

---

## PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

*To the honorable the Supreme Court of the United  
States:*

The United States of America hereby respectfully petitions that a writ of certiorari be issued to review the judgment of the Circuit Court of Appeals for the Eighth Circuit reversing and remanding a judgment of conviction on which a fine of \$99,000.00 was entered by the United States District Court for the Eastern District of Oklahoma on 99 counts of an indictment charging respondent with receiving concessions and discriminations in rates on shipments of gasoline from Kiefer, Drumright, and Jenks, Oklahoma, to its refinery at Port Arthur, Texas, in violation of the Elkins Act of February 19, 1903, 32 Stat. 847, as amended June 29, 1906, 34 Stat. 587. The shipments in question had been billed to respondent by

543065

its subsidiary, the Gypsy Oil Company, as "unrefined naphtha," and respondent had paid only the lower charges applicable to that commodity instead of the higher charges applicable to gasoline. January 16, 1923, said Circuit Court of Appeals entered an order denying the petition of the Government for rehearing of the case.

#### STATEMENT.

Respondent and the Gypsy Oil Company are both subsidiaries of the Gulf Oil Corporation, but for convenience the Gypsy Oil Company is herein referred to as respondent's subsidiary.

The Gypsy Oil Company produced condensates from natural gas at its compression plants at Kiefer, Drumright, and Jenks, Oklahoma.

The Interstate Commerce Commission, under the powers conferred upon it in the so-called Transportation of Explosives Act, Criminal Code, sections 233-236, 35 Stat. L. 1134, had issued regulations forbidding the transportation of such condensates in ordinary tank cars, unless their vapor pressure had been reduced to a maximum of 10 pounds per square inch, and requiring when so shipped, either alone or blended with other petroleum products, that they be shipped and described as gasoline, casing-head gasoline, or casing-head naphtha. These regulations further required that the shippers certify that the shipments were "properly described by name \* \* \* according to the regulations prescribed by the Interstate Commerce Commission." (Record, 1216-1270.)

In addition, these regulations had been published and filed with the Interstate Commerce Commission by the carriers in their tariffs as Rule 44 of the Western Classification, which governed all the shipments covered by the indictment. (Record, 1040-1211.)

Respondent's subsidiary and all other shippers of such condensates, in order to reduce their vapor pressure to the maximum of 10 pounds per square inch prescribed by the Commission for shipment in ordinary tank cars, either weathered the pure condensate (that is, exposed it to the atmosphere until its pressure became reduced) or blended it with crude naphtha. As has been stated, the Commission's regulations, and the carriers' tariffs *required such condensates, either alone or blended with other petroleum products, to be shipped and described as gasoline, casing-head gasoline, or casing-head naphtha*, and prior to December 2, 1916, respondent's subsidiary (Record, 188-191, 208-209), as well as all other shippers (Record, 427-428), so shipped and described such shipments, and respondent paid the gasoline rates applicable thereto (Record, 281).

During the entire period of the indictment all other shippers continued to bill such shipments as gasoline and to pay the rates applicable thereto. (Record, 427-428.) On December 2, 1916, however, respondent obtained the publication of lower rates on "unrefined naphtha" from these Oklahoma points to Port Arthur, which rates were about 59 per cent of the rates on gasoline, and thereafter respondent's subsidiary, without making any change whatever

in the nature of its shipments (Record, 550), and contrary to the Commission's safety regulations and to the carriers' tariffs, and though continuing to certify that its shipments were properly described by name as required by the regulations of the Interstate Commerce Commission (Record, 959, 961, 963, 966), shipped and described such condensates as "unrefined naphtha" and respondent paid only the lower rates applicable to that commodity (Record, 550). Moreover, the Government contended and introduced evidence (Record, 1363-1377) showing that the respondent had obtained the publication of these rates on "unrefined naphtha" by misrepresentation and by concealing the fact that it was intended to ship these condensates under that description, contrary both to the Commission's regulations and to the carriers' tariffs. In addition, the Government proved that, though these rates on "unrefined naphtha" were open to respondent's competitors, if such were a proper description of these condensates, respondent's competitors, during the entire period covered by the indictment, continued to ship such condensates as gasoline and to pay the higher rates applicable to that commodity (Record, 427-428), and that respondent's subsidiary itself continued to use this description in shipping such condensates to other points (Record 214-215).

According to the Bureau for the Safe Transportation of Explosives, gasoline is more destructive than dynamite, and is the most destructive article handled by the railroads, and the records of that Bureau

show that at Memphis, Tennessee, on January 24, 1921, 13 people were killed, 18 people were injured, and a large loss of property resulted from an explosion of a tank car of casing-head gasoline; that at Ardmore, Oklahoma, on September 27, 1915, 39 people were killed, a large number of people were injured, and a large loss of property resulted from an explosion of another tank car of the same commodity; that at Gainesville, Texas, on May 18, 1917, 1 railway employee was killed, and 3 other persons were injured by the explosion of a tank car of casing-head gasoline blended with naphtha, shipped by respondent's subsidiary to the respondent; and that 14 other such explosions since April 21, 1911, have resulted in the death of 19 people and the injury of 58.

**REASONS FOR GRANTING THE PETITION.**

**I.**

The judgment of the Circuit Court of Appeals conflicts with, and practically nullifies, the powers of the Government under the so-called Transportation of Explosives Act to enforce the regulations promulgated by the Interstate Commerce Commission for the safe transportation of explosives and other dangerous articles.

It is most remarkable that the opinion of the Circuit Court of Appeals *does not even mention* the Commission's explosive regulations, requiring these condensates to be shipped and described as gasoline, though such regulations appear in full in the record. (Record, 1216-1270.)

## II.

Said judgment practically nullifies the powers conferred upon the Interstate Commerce Commission under sections 1, 6, 13, and 15 of the Act to Regulate Commerce, to prescribe just and reasonable rates and classifications and just and reasonable regulations and practices affecting the manner in which property tendered for transportation shall be marked and described.

It is again most remarkable that the opinion of the Circuit Court of Appeals *does not even mention* the fact that Rule 44 of the Western Classification governing these shipments required such condensates to be described as gasoline, though such tariff provision appears in full in the record. (Record, 1040-1211.)

Moreover, the judgment of that court requires the carriers to accept approximately 59 per cent of their published gasoline rates on such condensates, though the gasoline rates remain the published rates, and though they have never been found unreasonable by the Interstate Commerce Commission, but, on the contrary, have been expressly held reasonable, as applied to such condensates, in the case of *Southern Carbon Company v. A. & L. M. Ry. Co.*, 62 I. C. C. 733, cited to the court in the Government's petition for rehearing.

## III.

The judgment of the Circuit Court of Appeals seriously imperils the Government's interests in the



following pending litigation in relation to similar misbilling of casing-head gasoline as "unrefined naphtha":

(a) It practically precludes the Government from prosecuting 7 other criminal indictments pending in the Eastern District of Oklahoma against the respondent, its officers, and certain carriers, charging violations in this respect of the Elkins Act, of the Act to Regulate Commerce, and of the so-called Transportation of Explosives Act.

(b) It practically precludes the Government, through the Director General of Railroads, from collecting undercharges outstanding against the respondent in this respect, aggregating approximately \$500,000.

(c) It probably subjects the Government, through the Director General of Railroads as Agent of the President, to liability for overcharges in this respect, aggregating approximately \$500,000.

#### IV.

The action of the Circuit Court of Appeals in reversing the judgment of the District Court on the ground that the District Court erred in refusing defendant's (respondent's) request for an instructed verdict, is extraordinary and unjustifiable in any event.

This action of the Circuit Court of Appeals could only be justified if the District Court would have been warranted *in holding, as a matter of law*, that these condensates were unrefined naphtha and not

gasoline, and in withdrawing that question from the jury on that ground. In fact, the Circuit Court of Appeals reaches this conclusion by choosing by what amounts to a mere fiat to accept *as conclusive* the testimony of certain expert chemical witnesses for respondent that these condensates were *chemically* unrefined naphtha, entirely disregarding the admissions of these same experts that these condensates were popularly known as gasoline (Record, 694); that their designation as gasoline had been prescribed by the Interstate Commerce Commission for transportation purposes both with reference to safety (Record, 1216-1270) and to rating (*Southern Carbon Co. v. A. & L. M. Ry. Co., supra*); that the carriers' tariffs prescribed their designation as gasoline (Record, 1040-1211); that the respondent and its subsidiary were the only shippers who ever designated such condensates as "unrefined naphtha" (Record, 427, 428); and that the respondent and its subsidiary had previously invariably designated them as gasoline (Record, 188-191, 208-209), and that respondent's subsidiary continued to so designate them in shipments to other points (Record, 214, 215).

#### V.

Accepting at their face value the alleged errors in the admission of certain testimony and in remarks of counsel to the jury, assigned by the Circuit Court of Appeals as among the grounds upon which that court reversed and remanded for dismissal, such errors warranted the Circuit Court of Appeals at most in remanding the case for a new trial.

In fact, the Government undertakes, if the writ is granted, to show that no errors were committed by the District Court in this respect.

It is therefore respectfully submitted that this court, in view of the public importance of the questions involved, and the extraordinary action of the Circuit Court of Appeals in reversing and remanding for dismissal, instead of at most remanding the case for a new trial, should issue its writ of certiorari to review the judgment of the Circuit Court of Appeals in this respect.

Respectfully submitted.

JAMES M. BECK,  
*Solicitor General.*

WASHINGTON, D. C., *April —, 1923.*

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# In the Supreme Court of the United States

OCTOBER TERM, 1924

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THE UNITED STATES OF AMERICA	}	No. 40
v.		
GULF REFINING COMPANY		

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*ON WRIT OF CERTIORARI TO THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

---

**REPLY TO DEFENDANT'S MOTION TO DISMISS OR  
AFFIRM, AND ASSIGNMENT OF ERRORS AND BRIEF  
AND ARGUMENT ON BEHALF OF THE UNITED  
STATES**

(Italics in quotations are ours, if not otherwise stated)

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## STATEMENT OF THE CASE

This is a criminal prosecution for receiving concessions in rates in violation of Section 1 of the Interstate Commerce Act (32 Stat. 847-8) as amended by the act of June 29, 1906 (34 Stat. 584). There were one hundred counts in the indictment. The first forty counts are based on alleged concessions received on consignments of gasoline shipped from Kiefer, Oklahoma, to West Port Arthur, Texas. (Vol. 1, pp. 2-62.) Counts 41 to 85, inclusive

(pp. 62-123), were based on shipments of gasoline from Jenks, Oklahoma, to West Port Arthur, Texas, and the remainder of the counts were based on shipments from Drumright, Oklahoma, to West Port Arthur (pp. 124-145). A plea in abatement was filed, but on motion was stricken out by the court. (Vol. 1, p. 147.) A demurrer to the indictment was also filed which was overruled. (Vol. 1, p. 150.) A trial was had, and all the counts, except No. 44, were submitted to the jury; and the jury found the defendant guilty on each of the ninety-nine counts. The court thereupon imposed the minimum fine of \$1,000 under each count, and pronounced judgment against the defendant for \$99,000. (Vol. 1, p. 167.) A motion for a new trial was made and overruled. (Vol. 1, p. 943.) The defendant then entered a motion in arrest of judgment, which was also overruled (p. 948). Errors were assigned, and an appeal was prosecuted to the Circuit Court of Appeals for the Eighth Circuit; and that court sustained a number of the assignments of error, and remanded the cause to the District Court "with directions to grant a new trial." (Vol. 2, p. 1692.) The grounds upon which a new trial was awarded appear in the opinion of the Court (Vol. 2, pp. 1690, 1691) and will be stated in the assignment of errors.



REPLY TO DEFENDANT'S MOTION TO DISMISS OR  
AFFIRM

## I

This court has jurisdiction to bring the case here by writ of certiorari

The defendant insists that the case, being a criminal one, can not at the instance of the Government be removed to this court by writ of certiorari.

By Section 6 of the act establishing the Circuit Court of Appeals (Chapter 517, Act of 1891; 26 Stat. 826, 828), appellate jurisdiction, except in specified cases, was vested in the Court of Appeals; and it was provided that the—

judgments \* \* \* of the circuit courts of appeals shall be final in all cases \* \* \* arising \* \* \* under the criminal laws;

except the Circuit Court of Appeals may certify to the Supreme Court any question or proposition of law concerning which it desires instruction for its decision—

And excepting also that in any such case as hereinbefore made final in the circuit court of appeals it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

In *United States v. Dickinson*, 213 U. S. 92, it was held that this provision did not authorize this

128  
jud

court to take jurisdiction over a criminal case in which a judgment of conviction had been reversed by the Circuit Court of Appeals. That case was decided in 1909. And when the Judicial Code was adopted in 1911, Section 240, which embodies the provision of the act of 1891, that relates to the removal of causes from the Circuit Court of Appeals to this court by writs of certiorari, was made to read as follows:

In any case, *civil or criminal*, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, *upon the petition of any party thereto*, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court. (36 Stat., Chap. 231, p. 1157.)

Omitting the italicized words, this section is exactly the same in substance as the provision originally enacted. The intention to confer jurisdiction upon this court to issue a writ of certiorari to the Circuit Court of Appeals in a criminal case on petition of the Government could not possibly be more clearly expressed. By no possible refinement of construction can the Government be eliminated from the phrase "upon the petition of *any party thereto*." But if any doubt could otherwise exist, it is dispelled by what occurred in the Senate when the words above

italicized were introduced as an amendment to the report of the Committee that had the bill in charge. The following appears in the proceedings of the Senate (46 Cong. Rec. 2134):

The VICE PRESIDENT. \* \* \* The Senator from Utah (Mr. Sutherland) offers the following amendment:

The SECRETARY. On page 173, section 227, in line 6, after the word "case," insert "civil or criminal," and in line 9, after the word "otherwise," insert "upon the petition of any party thereto."

Mr. HEYBURN. I call the attention of the Senator from Utah to the effect this amendment would have. Would that include the United States as a party?

Mr. SUTHERLAND. *That is the object of it.*

Mr. HEYBURN. *It permits the United States to ask through certiorari proceedings for a review of a criminal case?*

Mr. SUTHERLAND. *Yes.*

Mr. HEYBURN. It is pretty wide departure, it seems to me. I do not want to enter into much controversy about it, but it seems to me that it is going a good ways from the established rule to allow the United States to review a criminal case by writ of certiorari.

Mr. SUTHERLAND. *The object of it is this: Very often in the circuit court of appeals a criminal case has gone off on a purely technical proposition, and there is no way by which the question can be got to the Supreme Court of the United States. I think in some cases it is a great necessity that the Supreme Court of the*

*United States should have the power to review such a case.*

MR. HEYBURN. We hesitated a long time before we allowed the right of appeal to the United States in criminal cases. It is only a few months since we enacted that legislation. *Now, if we allow the United States, in a case where there is no right of appeal, to bring up upon certiorari a criminal case that has been decided adversely to the United States, it is going a long way. I will not do more than interpose these suggestions. I had not anticipated any such amendment being offered. It so radically widens the jurisdiction in the matter of appeals in criminal cases that it seems to me that it ought to go to a standing committee—the Judiciary Committee—of the Senate. But I am willing to let it pass in. It will be considered in conference.*

THE VICE PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Utah.

The amendment was agreed to.

True, it has often been said rather than practised that debates of a legislative body can not be looked to in construing a statute, but it is well settled that the report of the committee having the bill in charge can be considered by the court. Certainly with greater reason can consideration be given to the explanation as to the purpose and meaning of an amendment given by the member who introduced it, and as a result of which explanation it is then and there adopted.

The bill went to conference; and the report of the conference committee to the House of Representatives was accompanied by a statement in which reference was made to Section 240 as follows (46 Cong. Rec. 4001):

The other amendments made by the Senate, embracing substantive changes, were as follows:

\* \* \* \* \*

Section 240 (227). The insertion of the words, "civil or criminal," and the words "upon the petition of any party thereto." The effect of this amendment is to make more clear the right of the Supreme Court of the United States by writ of certiorari to bring before it for review any case in which the judgment or decree of the Circuit Court of Appeals is made final by the provisions of the Act, and to define more accurately the method by which such writ might be obtained.

It is suggested that this language indicates, not a purpose to extend the power of the court, but to eliminate uncertainty as to the power already possessed. In fact the broad language used in the original act creating the Circuit Court of Appeals does include cases of this character, but following by analogy *United States v. Sanges*, 144 U. S. 310, the court was constrained to hold that Congress did not intend to vest the power in this court to issue a writ of certiorari in a criminal case on petition of the Government. In other words, in the *Dickinson* case, the court held that, although the language was broad

enough to include such a case, it would not be construed to do so, because it had been a principle recognized not only by this court, but by the courts of a large majority of the States and of England, not to permit a review of a criminal case by an appellate court at the instance of the Government *unless authority was given by express language*. Therefore the language of the conference committee was apt, because the intention was to make it clear, so clear as to remove any doubt upon the subject, that such authority was vested in this court. If the words added on motion of Senator Sutherland do not have that effect, then what do they mean? And what sense is there in the language used by the Conference Committee? Instead of making more clear the extent of the power of the Court and defining more accurately how the writ may be obtained, they would be senseless, and would but add uncertainty as to the powers possessed by the court in this respect.

## II

**The fact that the mandate, following the judgment of the Circuit Court of Appeals, directs a new trial is immaterial**

Although the court in its opinion held that the trial court committed error in not directing a verdict for the defendant, yet in its judgment it remanded the case to the District Court "with directions to direct a new trial."

But so far as the jurisdiction of this court is concerned it can make no difference whether the judg-

ment in the Circuit Court of Appeals was final or not. There is a broad distinction between final decisions of district courts, which the circuit court of appeals is given authority to review by section 128 of the Judicial Code, and "a final judgment or decree in any suit in the highest court of a State," which, if involving certain questions, can be reviewed by this court, and judgments and decrees of the circuit courts of appeal, which are declared final by said section 128. What is meant by the judgments and decrees of that court being final in the classes of cases specified is that there is no appeal therefrom as a matter of right, and they can only be reviewed by writs of certiorari. As said by the Chief Justice in *Lau Ow Bew v. United States*, 144 U. S. 47, 57:

By this section judgments or decrees in the enumerated classes of cases are made final in terms by way of the exclusion of any review by writ of error or appeal, while as to cases not expressly made final by this section, appeal or writ of error may be had of right, where the money value of the matter in controversy exceeds one thousand dollars besides costs.

The effect of the provision is thus clearly stated by the court in *American Construction Company v. Jacksonville Railway Company*, 148 U. S. 372, 385:

Then follows the provision in question, conferring upon this court authority "in any such case as is hereinbefore made final in the Circuit Court of Appeals," to require, by *certiorari* or otherwise, the case to be certified to this



court for its review and determination. There is nothing in the act to preclude this court from ordering the whole case to be sent up, when no distinct questions of law have been certified to it by the Circuit Court of Appeals, at as early a stage as when such questions have been so certified. The only restriction upon the exercise of the power of this court, independently of any action of the Circuit Court of Appeals, in this regard, is to cases "made final in the Circuit Court of Appeals," *that is to say, to cases in which the statute makes the judgment of that court final, not to cases in which that court has rendered a final judgment.* Doubtless, this power would seldom be exercised before final judgment in the Circuit Court of Appeals, and very rarely indeed before the case was ready for decision upon the merits in that court. But the question at what stage of the proceedings, and under what circumstances, the case should be required, by *certiorari* or otherwise, to be sent up for review, is left to the discretion of this court, as the exigencies of each case may require.

Since the preparation of this brief this court granted, on October 20, 1924, a writ of *certiorari* on petition of the United States in the case of *United States, Petitioner, v. Trenton Potteries Co. et al.*, No. 591, on the docket of the Supreme Court for the present term. That case was in the same condition as this, except the Court of Appeals had not held that there was no evidence to sustain the verdict of the jury.

## III

**The questions presented in this case are of such gravity as to require their review by this court**

The questions presented in this case are vitally important for the following reasons:

1. The Circuit Court of Appeals has undertaken to pass upon the merits of the case, and by casting aside all evidence relating to common understanding and the conduct and practices of defendant itself, and giving attention solely to technical but indefinite and contradictory definitions of gasoline given by experts, when their own testimony show that their definitions are wholly inaccurate, has determined that the record presents no controverted question of fact. In a case of great magnitude, and upon the determination of which the rights of many other parties depend, a departure from fundamental and universally recognized principles applicable in determining whether a case involves a question of fact for the decision of a jury itself requires a review of the case by this court.

2. The Circuit Court of Appeals has in effect decided that, in determining under what rate an article shall be shipped, the name by which the article is generally known by its producers and by the trade, and under which it has always been shipped, except by the accused under the circumstances out of which the controversy has arisen, and its similarity to and in important particulars identity with an article which undisputably must be shipped under a

specified rate, *has no evidential weight whatever*, but that the shipping name of the article is to be determined *entirely* by its characteristics as described and its technical definition given by experts, and has thus overruled the well-recognized principle that the shipping name of a commodity is that under which it is generally known in commerce and among those by whom it is produced, used, and consumed.

3. The Circuit Court of Appeals in its decision disregarded entirely the regulations of the Interstate Commerce Commission, made within the scope of its authority, wherein the Commission directed that the commodity here in question be designated as "gasoline," and directed that it be shipped under that name.

4. In *Southern Carbon Company v. Arkansas and Louisiana Midland Railway Company*, 62 I. C. C. 733, which was decided after the trial of this case in the District Court but before the decision was handed down by the Circuit Court of Appeals, the Interstate Commerce Commission held that a commodity identical with casinghead gasoline was "gasoline," and that rates on "gasoline" were applicable thereto, and therefore a conflict upon this question exists between the Circuit Court of Appeals and the Interstate Commerce Commission, the body upon which Congress has expressly conferred authority to determine questions of this character.

## ASSIGNMENT OF ERRORS

The United States insists that the Circuit Court of Appeals erred in the following respects, to wit:

## I

In holding that "When all competent and relevant proof in the case is given a fair and impartial consideration the conclusion that the verdict is without support is inevitable"; and that the trial court "erred in refusing defendant's request for an instructed verdict." (Vol. 2, pp. 1691, 1692.) ✓

This question was raised in the Court of Appeals in the sixth assignment of error. (Vol. 2, pp. 1543, 1544.)

## II

In holding that plaintiff improperly throughout the trial in the District Court insisted that the conduct of the defendant was fraudulent, one ground for the insistence being that its traffic agent asked for the rate on unrefined naphtha; when the claim of fraud in that respect was refuted by the fact that the Interstate Commerce Commission had established a rate to Baton Rouge on a product designated "unrefined naphtha" shown to be substantially the same as the condensate of the Gypsy Company plant. (Vol. 2, p. 1690.) ✓

Apparently this holding of the court is based on the evidence set out in the assignments of error which appear in Vol. 2 on pages 1544-1548, 1550-1553, 1559-1601, 1632, 1638, 1640, 1641, and 1663.

## III

In holding that it was error for the Trial Court to admit over objection testimony showing that the same commodity was being shipped by the Gypsy Company to Pittsburgh after December 2, 1916, as "gasoline," while it was being shipped to Port Arthur as "unrefined naphtha." (Vol. 2, p. 1690.)

The evidence upon this subject, which it was held should not have been admitted, is set forth in the assignments of error in the Court of Appeals found in Vol. 2, pp. 1569-1588, 1640-1645.

## IV

In holding that the Trial Court erred in admitting over objection testimony that "casinghead gasoline and blended product at other casinghead compression plants in Oklahoma were called gasoline and shipped as gasoline, without a showing that they were substantially similar to those of the Gypsy Company, and in the face of proof that they were not of a uniform blend with those of the Gypsy Company but contained, in some instances, as much as 75% naphtha." (Vol. 2, p. 1690.)

The evidence, which under this holding should not have been admitted, is set forth in the assignments of error in the Court of Appeals, appearing in Vol. 2, pp. 1569-1588, 1640-1645.

## V

In holding that the remarks of government counsel in argument to the jury to the effect that the Mellon

Institute at Pittsburgh was founded by the Mellon family and Mr. Mellon is president of the Gulf Oil Corporation, and also that the company by this advantage put in its own pocket hundreds of thousands of dollars which it was not entitled to, and of which the people of the United States have to bear the burdens, afforded grounds for reversal. (Vol. 2, pp. 1690, 1691.)

The assignment of error in the Court of Appeals relating to this subject is 117, p. 1663, and the remarks referred to by the Court of Appeals appear in the record, Vol. 1, pp. 905-907.

#### BRIEF AND ARGUMENT

The assignments of error will be considered in the order mentioned.

#### I

The Circuit Court of Appeals erred in holding that "When all competent and relevant proof in the case is given a fair and impartial consideration the conclusion that the verdict is without support is inevitable," and that the trial court "erred in refusing defendant's request for an instructed verdict"

The finding by the Court of Appeals, that the verdict of the jury is without support of evidence, necessitates a somewhat extended citation of the evidence and discussion of the facts; but such discussion will enable the Court to readily see the relevancy of the evidence which that court held should have been rejected.

The shipments in question were made to defendant by the Gypsy Oil Company; and it was admitted that the Gulf Oil Company is a corporation of which the Gypsy and Gulf Refining Companies are subsidiaries, the Gulf Oil Company owning all the stock of the other two companies except a few shares personally held by the directors for qualifying purposes. (Vol. 1, p. 210.) It is also shown without dispute that Mr. Donovan was General Superintendent of the Gasoline Department of both the Gulf and Gypsy Companies, and that he reported to Mr. Tabor, who was Vice President of the Gulf Company, and that Mr. Ellis was Traffic Manager for both companies. (Vol. 1, pp. 246-248.) And it was admitted that Mr. Ellis, as Traffic Manager of the Gulf Company, instructed Mr. Donovan how to ship the product in question. (Vol. 1, p. 484.)

After December 2, 1916, between Kiefer, Jenks, and Drumright, oil-producing points in Oklahoma, and Port Arthur and West Port Arthur (the termination of a branch line about two miles in length), Texas, there were two published commodity rates, one on "gasoline in tank cars" at 33¢ per 100 pounds, and the other on "unrefined naphtha in tank cars" at 19½¢ per 100 pounds. (Topping, Vol. 1, pp. 285-288, and exhibits Vol. 2, pp. 985, 1043. The same rates also appear in numerous other exhibits.) There was also a rate of 39¢ on "Oils: Petroleum oil and its products \* \* \* listed under head of 'Petroleum and Petroleum Products.'" (Gov. Ex. 36, Vol. 2, pp. 981, 984, 986, and numerous other tariffs.)



The product in question was shipped as "unrefined naphtha" at the  $19\frac{1}{2}\text{¢}$  rate (Vol. 1, p. 190); and the question of fact for the jury was whether this was a correct designation or whether it should have been shipped as "gasoline" at the 33¢ rate. If the higher rate applied, the defendant received a concession of  $13\frac{1}{2}\text{¢}$  per 100 pounds as alleged in the indictment. Plaintiff here in the beginning emphasizes its contention that the question was not whether the product answered in every respect to a *technical* definition of gasoline, as appears to have been the view of the Court of Appeals, but *what was its proper shipping designation?* When so considered, we respectfully submit, the Court of Appeals could have held with greater reason that there was no material evidence contrary to the verdict, and therefore that no prejudicial error could have been committed in the admission of testimony, in argument of counsel, or in the charge of the court.

The exact nature of the product in question will appear from a consideration of the treatment of crude petroleum and of the products resulting therefrom.

**The "naphtha fraction" and products derived therefrom**

The Government introduced Mr. Pritchard, who was Superintendent of the Gulf Refining Company; and on cross-examination he briefly described the manufacture of petroleum products in so far as it is important in this litigation. He says that the "naphtha fraction" is the portion of the crude oil

which contains gasoline, naphtha, and benzine, and is the lighter hydrocarbons of the crude oil. In the first distillation the "naphtha fraction" is separated from the balance of the crude oil, and is pumped into the agitator and given a sulphuric-acid treatment to purify it before its distillation. It is then put in the steaming still, and is there subdivided into naphtha, benzine, and gasoline. Gasoline is the lighter fraction, benzine the intermediate, and naphtha the heavy. He also says that while in the process of refining they are all called "naphtha," but that after refined some people call one finished product "gasoline," another "benzine," and another "naphtha," and that others call the entire group "naphtha." With this process the distillation is complete, but the product that is to become gasoline is given a chemical treatment varying according to what is required, and is then pumped out into the tanks. (Vol. 1, pp. 586-589.) Defendant's expert Tabor says the "naphtha fraction" includes the parts "which come off from the crude oil from the beginning of distillation down to what goes into burning oil." (Vol. 1, pp. 676, 677.) Pritchard says that painter's naphtha is the heavy naphtha which is used for the purpose of treating, and has a gravity of about 54. (Vol. 1, pp. 585-6.) Riedeman, who was employed from September, 1916, to September, 1918, in the gasoline end of the Gypsy Company, says that he made gravity and color tests of the naphtha that was shipped to Kiefer for blending as hereafter explained, and that the gravity was around

54 (Vol. 1, p. 185); while Otey, who was employed by the defendant as inspector at Port Arthur, says that its gravity was 55.6 plus and its color 25 (Vol. 1, p. 470), which means that it was white.

#### Production of Casinghead Gasoline

Casinghead gasoline is the name of a product obtained from oil wells. Gases emanate in the wells, and these gases are pumped through tubes to plants for treatment. (Riedeman, Vol. 1, pp. 185-6.) If oil gets in the line through which the gas is conducted from the well to the plant the product is discolored and rendered impure. And at Kiefer they had erected a tank, which they called a "scrubber," about four feet in diameter and ten feet high; and the gas was injected into this tank about the center; and the moisture, oil, and other foreign matter was thereby separated from it. (Millard, Vol. 1, pp. 551-2.) The same process was used at Drumright, though Routh did not know the tank was called a "scrubber." (Vol. 1, p. 236.) The gas was reduced into a liquid by compression. (Sweet, Vol. 1, p. 202.) Routh, Superintendent at Drumright, says the vapor tension of the liquid that came from the compressor was from 20 to 30 pounds, and the specific gravity was from 88 to 90, and its color was generally white to the eye. (Vol. 1, pp. 242-3.) Millard, who was Superintendent at Kiefer from February, 1914, to November, 1918, says that the product was generally white, and if colored they shipped it by itself. (Vol. 1, pp. 552-3.)

**Blending of naphtha and casinghead gasoline at compression plants, and the character of the resultant product**

Naphtha or painter's naphtha, which is above described and is one of the products resulting from the steam distillation of the naphtha fraction, was shipped in tank cars from the refining plant at West Port Arthur to the casinghead plants, and there blended with the casinghead gasoline. This naphtha was shipped north in clean cars. (Riedeman, Vol. 1, p. 186.) Riedeman says that the two products were blended "to lower the gravity of the casinghead gasoline." (Vol. 1, p. 187.) The vapor tension of the casinghead gasoline was generally about 10 pounds to the square inch; and this blend with the naphtha was made to reduce the pressure below 10 pounds. According to Routh the blend at Drumright was in the proportion of 35% naphtha and 65% gasoline. After the blend was made, it was weathered so as to still further reduce the vapor tension. (Vol. 1, pp. 236-7.) Sweet thinks that at Kiefer the blend was about one-third naphtha and two-thirds gasoline. (Vol. 1, p. 203.) The color of the blended material as a general proposition was white, and its gravity varied from 70 to 75. (Vol. 1, p. 243.) Pritchard says that the naphtha is used as a holder or container of the casinghead gasoline, and absorbs and keeps it in a liquid solution, and makes it safer to handle. (Vol. 1, p. 591.) Pritchard also says that the specific gravity of this product received from Jenks was about 77 or 78, and some as high as 80, that the average color was 24 to 25 and the vapor tension was about 8 (Vol.

1, pp. 594-5), and that the gravity of that received from Drumright was about 77. (Vol. 1, p. 596.) After the naphtha and gasoline were blended it was shipped to West Port Arthur in the same cars in which the naphtha had been transported from that point; and if the cars had become in any respect dirty, they were cleaned. (Riedeman, Vol. 1, pp. 186-7.) The Jenks product appears to have been unblended, and prepared for shipment only by weathering. Pritchard says it was unblended. (Vol. 1, p. 594.) Millard says it was weathered at Jenks, but the product obtained was similar to that shipped from Kiefer. (Vol. 1, p. 554.)

It was this blend of casinghead gasoline with the painter's naphtha shipped from West Port Arthur that defendant shipped from Kiefer and Drumright to West Port Arthur, and the unblended casinghead gasoline condensed by weathering from Jenks to West Port Arthur, under the name of and at the rate for "unrefined naphtha."

Both before and during the time these shipments were being made the Gypsy Company shipped the same product to other points than West Port Arthur as "gasoline"

Riedeman testifies that prior to December 2, 1916, by instructions from the company, he had always billed this product as "gasoline." (Vol. 1, pp. 190-1.) Millard testifies that prior to December 2, 1916, the product was always billed as "gasoline," and that there was then no change in the commodity, but only in the name. (Vol. 1, p. 550.) It was admitted that prior to the date when the

"unrefined naphtha" rate went into effect, this commodity was shipped as "gasoline" to all points where that rate did not apply. (Vol. 1, p. 249.)

On January 15, 1914, Traffic Manager Ellis wrote a carrier:

We want to move 10 cars of *gasoline* from Kiefer to Port Arthur, to be handled in our own boats to our eastern distributing stations. (Gov. Ex. 85, Vol. 2, p. 1363.)

On June 2, 1914, Ellis wrote Donovan, Superintendent of the Gypsy Company:

Upon receipt of this letter, will you kindly change routing on the *gasoline* from Kiefer to Port Arthur, so that it will route: Frisco, H. & T. C., T. & N. O., until further instructions. (Gov. Ex. 68, Vol. 2, p. 1290.)

The product was designated *gasoline* in other correspondence, which will be quoted hereafter.

And it was also admitted that from the time the plant was constructed in 1913 up until about the end of 1914 or 1915 the practice was to ship naphtha from Port Arthur to Kiefer and there blend it with casinghead gasoline, and ship the blended product to northern points, describing it as "*gasoline*" (Vol. 1, p. 479); that the shipments north were discontinued, except to defendant's plant at Pittsburgh, which shipments continued up to the present time under the name of "*gasoline*"; that the remainder of the material was shipped to the Fort Worth refinery described as "*gasoline*" up to 1915, and thereafter to Port Arthur refinery billed and de-

scribed as "gasoline" up to December 2, 1916, and thereafter it was shipped from Kiefer to Port Arthur under the designation "unrefined naphtha," and to Pittsburgh as "gasoline." (Vol. 1, pp. 479-80.) And a specific admission was made that *from the same tank* one carload was shipped to West Port Arthur as "unrefined naphtha" and another car to Shady Side, Pittsburgh, as "gasoline." (Vol. 1, pp. 487-8.) See also Sweet, Vol. 1, p. 215; Millard, Vol. 1, p. 549.

Same product was being shipped at the same time by the Gypsy Company **TO CUSTOMERS OF THE GULF REFINING COMPANY DIRECTLY** as "gasoline" //

Government Exhibit 95 (Vol. 2, pp. 1375-76) is "Partial statement of shipments of blended gasoline made from Kiefer, Okla., by Gypsy Oil Company for account Gulf Refining Company consigned directly to customers of Gulf Refining Company;" and with reference to these shipments, Mr. Millard testifies that they were billed as "gasoline"; that the only difference between the product thus shipped and that shipped to Port Arthur was the gravity, but he does not remember the exact amount of naphtha in the blend; that if he had a 70 gravity casinghead gasoline, and wanted to produce a 60 gravity for the purpose of marketing it direct, he would accomplish the result by blending with naphtha, and that if he wanted to reduce it to a 58 gravity he would accomplish it by using more naphtha, and that there was nothing else done to the gasoline that was sold direct than blending it with naphtha. Different customers called for



different gravities in their orders and the product was made to meet the orders. (Vol. 1, p. 555.)

**All other producers than the Gypsy Company both before and after December 2, 1916, shipped this same product as gasoline**

It was admitted by counsel for the defendant that the Texas Company had shipped to itself at Port Arthur over certain railroads, upon the dates, in the cars and the quantities alleged in the counts relating to that company, casing-head gasoline blended about one-third naphtha, and described in the shipping orders as "gasoline," and paid charges for the transportation from Kiefer and Jenks rates, respectively, of 33 and 39 cents per 100 pounds; that the commodity shipped to the Texas Company from Kiefer was produced by Crosby & Gillespie, and that shipped from Jenks by the Totem Gasoline Company. This admission was made subject to objection for irrelevancy. (Vol. 1, p. 382.) It was proven by Anderson, employed by the Kadeshan, Totem & Shade Gasoline Company, which company conducted the Totem operation at Jenks, the Kadeshan & Stone at Stone Bluff, and Kadeshan No. 2 at Broken Arrow, that they produced the same article (Vol. 1, p. 329), and that their shipments were made as gasoline (Vol. 1, pp. 333-4). Mr. McCarroll, who was with Crosby & Gillespie at Kiefer, shows that the product shipped to the Texas Company as gasoline was the same as the product here in question. (Vol. 1, pp. 340-3.) Mr. Haigh, Superintendent of the Casinghead Gasoline Plant located at Jenks, belonging to the Ajax Gasoline Company, testified that there were about ten gasoline

plants at Jenks, and that they all operated on the compression system and made about the same product, and that his company billed the product as liquefied petroleum gas when it was over ten pounds pressure and when under such pressure as "gasoline." (Vol. 1, pp. 396-8, 401.) Mr. League, who was inspector for the Bureau of Explosives, maintained by the railroad companies, and who had tested about 50% of the plants in Oklahoma, testified that prior to December 2, 1916, Mr. Donovan spoke of this product as casinghead gasoline, and that it was the same commodity that he investigated after December 2, 1916 (Vol. 1, pp. 410-413), and that the other plants he mentioned shipped the same product as "gasoline" (Vol. 1, pp. 421, 425-7). He further testified that different blends of casinghead gasoline with naphtha were shipped as gasoline, and that it was shipped under the same name when blended with kerosene or crude oil (Vol. 1, pp. 448-9); and that the range of vapor tension of such shipments was from six to ten pounds (Vol. 1, p. 450). Mr. Scott, who was also an inspector of the Explosive Bureau, gave testimony of like character. (Vol. 1, pp. 456-7.) And Mr. Barnhart, who had charge of Franchot's plant, testified that they shipped the product under the name of gasoline. (Vol. 1, p. 463.) Mr. Sweet testified that the Gypsy Company inclosed in drums the same material, except it contained a higher percentage of the naphtha that came from Port Arthur, and shipped it from Kiefer to various places under the name gasoline. (Vol. 1, pp. 215-17.)

**Correspondence between Gypsy Company and Railroad Company relative to putting in side track at Drumright**

Correspondence between the Gypsy Oil Company and the Railroad Company relating to putting in a spur track at Drumright shows that this product was regarded as gasoline. On November 10, 1916, McKirahan wrote Koontz, both agents of the Railroad Company, in regard to the proposed spur for the Gypsy Company:

I have succeeded in getting a very conservative estimate from the Gypsy Oil Company, *Gasoline* Department, on the business which this new *gasoline* plant at Drumright will bring us. They estimate that there will be shipped 40 carloads of *gasoline* per month which will go to their refinery at Port Arthur, Texas. Inbound they estimate 13 or 14 carloads of naphtha per month which will come from Port Arthur. (Ex. 76, Vol. II, p. 1294.)

And on February 9, 1917, the Gypsy Company wrote McKirahan:

In further reference to the *gasoline* loading rack track we intended to have constructed on your line at Drumright, Oklahoma, I now understand that your company will not permit placing of gasoline loading racks within 400 feet of your main line. \* \* \* It seems to me that rules and regulations governing shipments and handling of *gasoline* are laid down by the railroads and others without giving the matter involved due consideration. (Ex. 75, Vol. 11, p. 1293.)

A number of witnesses, who were familiar with the oil industry, testified that the product in question is known as gasoline and is gasoline

Anderson of the Kadeshan, Totem & Shade Company when asked to describe the product says:

It was blended gasoline (Vol. 1, p. 332).

And Haigh, of the Ajax Company, when asked the name of the commodity he produced (which was of the same character) answered, "Gasoline." And when asked by the court what the commodity was called said:

*Gasoline* after it (is) condensed.

The Court. What do you mean by condensed?

A. Run through a set of cooling coils and condensed into a liquid form (which he explains was a part of the condensing process).

Q. Then you say after you get it through the compression you call it *gasoline*?

A. Yes, sir.

Q. Suppose you were to combine one-third naphtha and two-thirds of the commodity after it was compressed, what would you call it then?

A. Gasoline.

Q. Just the same name as you would before?

A. Yes, sir.

Q. Why do you call it gasoline when it is through the compression process? How do you get the name gasoline?

A. Simply as a trade name. (Vol. 1, p. 396.)

League had testified in chief that the commodity was gasoline; and on cross-examination he was asked

if in so calling it he did not make a mental reservation, and he answered, "No, sir." (Vol. 1, p. 433.) Scott testified that they called this product "gasoline." (Vol. 1, p. 461.) Barnhart, of the Franchot Plant, says they called it "gasoline," and that they shipped it under that name. (Vol. 1, pp. 462-3.)

**Use made of product in question after delivered to refinery at West Port Arthur**

What was done with the product after it reached West Port Arthur is explained by Mr. Timmons, who was Pump House foreman, and Mr. Pritchard, defendant's superintendent. Mr. Timmons says that when the cars arrived samples would be taken from them and tests made for gravity and color (Vol. 1, p. 255); that if they received a car that was off color it would be pumped into tank No. 829, which was the *crude naphtha* tank, and the contents of that tank were run through a steam still; but the liquid put into tanks 805, 838, and 857 was not rerun, but was thereafter merely blended; that the number of cars they received from Kiefer, Jenks, and Drumright which were pumped into tank 829 was very small, maybe two per cent (Vol. 1, pp. 255-6); and that not to his knowledge was anything done with the contents of tanks 805, 838, and 857 other than to blend them (Vol. 1, p. 257). *It was conceded by counsel that no shipments described in the indictment went into tank No. 829.* (Vol. 1, p. 259.) On cross-examination Timmons said that the custom shows that if the gravity test was 57 or above, it was called

gasoline (Vol. 1, pp. 294-5); and that there were different specifications for gasoline—northern gasoline, southern gasoline, motor specifications and specifications for the Motor Transport Corps of the United States; aeroplane gasoline, fighting gasoline, used for bombing planes; South Carolina motor gasoline, specifications adopted by the State of South Carolina; and the company had its own standard called "Good Gulf Gasoline," and he thinks there were specifications for gasoline to be sold in Texas. They were all to some extent different. (Vol. 1, pp. 309-10.)

Mr. Pritchard testified that, when an order for gasoline was received with certain specifications, a mixture would be made to meet them, and this was done by pumping from the tanks which contained products of different specific gravities, and other qualities, the mixture being tested from time to time until it complied with the requirements of the specifications. (Vol. 1, pp. 586-7, 589.)

To describe it a little more specifically than the witness:

Say there were two tanks, one of which was No. 805, containing the product shipped from Kiefer, which was of high specific gravity, and another tank containing painter's naphtha, of a very low specific gravity. If an order was received for gasoline specifying an intermediate gravity, it would be filled by pumping from each of the tanks until the specific gravity and other requirements were met, and *this combined product was shipped as gasoline and defendant says it was gasoline; but it contends that a product is*

*not gasoline, and should not be so shipped, unless it meets the specifications of the particular order.*

Citation to the record is probably necessary to substantiate the assertion that such a contention is made. On pages 317-18, Volume 1, counsel for the defendant says:

Our contention is this, that this product is not gasoline until it is a finished product and that——

The COURT. When is it a finished product?

Mr. SWACKER. After this blending or correcting, until it gets down to meet the specifications.

The COURT. You are bringing in other purposes then, although it might be such a product as could be used in some commercial market as gasoline, that until it is blended in this refinery to meet the specifications of the kind of gasoline they put on the market, it would not be gasoline—is that what you mean?

Mr. SWACKER. Yes, sir; we say it is not gasoline, and in (which is) the proper name of the finished product.

On page 590, Vol. 1, Mr. Pritchard says that they don't consider at the Port Arthur refinery any product a refined product until it is a finished one, and that it might be gasoline for one purchaser and not gasoline for another purchaser. And on cross examination he says that what he terms gasoline is the product finished in accordance with the specification of the purchaser, and he doesn't call anything gasoline until it meets the specifications of the man that buys it



for the market; but he says there are different kinds of gasoline, and he might call one South Carolina gasoline and another motor gasoline. (Vol. 1, p. 602.)

In other words, if a wholesale merchant were to order sorghum molasses of a certain consistency, and molasses of a different consistency were shipped, it would not be sorghum molasses.

#### Alteration of defendant's records

Some of the documents delivered to Government's agents for inspection were altered by eliminating therefrom the description "gasoline." The Government's Exhibit No. 77 was part of a record that was subsequently kept on the daily test sheet and shows the number of cars that were received from the different points upon specified dates. It appears that on the dates of December 29, 1916, January 1, January 3, January 8, and January 31, 1917, after each word "Kiefer" appeared the word "gasoline" (Vol. 2, pp. 1297-1298-1300), but this word had been erased (Otey, Vol. 1, pp. 501-3); and it was admitted by counsel that these erasures were made before the document was delivered to the Government's agent (p. 507). That part of Government's Exhibit 80, which appears on pages 1330-1336, was a sheet containing a list of cars and showing outages, etc., for the month of April, 1917. This sheet appears to have been made in duplicate, and the heading had been cut off the one first handed to the Government's agent. In response to a *subpœna duces*

*tecum* the other copy was turned over to the Government during the trial; and that copy is Exhibits 81 and 82. (Vol. 2, pp. 1354-1358.) Exhibit 81 is a letter addressed to defendant's auditor at Pittsburgh and begins, "Our April yield statement will show, as a receipt, 146 cars of *gasoline* from Kiefer," etc.; and Exhibit 82, which is the list attached to Exhibit 81, is headed "Receipts of Kiefer *Gasoline*, April, 1917." (See Stewart, pp. 529-30-31.) The Court of Appeals appears to hold that the effort upon the defendant's agents to conceal their admissions of record that the product in question was gasoline, and was shipped as such, is inadmissible.

**When this rate was published the defendant did not disclose to the carriers its purpose to ship this product thereunder**

This is fully disclosed by the correspondence preceding its publication, and the testimony of those who represented the carriers. The following correspondence appears in the record:

On January 15, 1914, Mr. Ellis, agent for the defendant, wrote Mr. Powers, agent for the St. L. & S. F. R. R. Co., to the effect that the company wanted to move ten cars of *gasoline* from Kiefer to Port Arthur, to be handled in its boats to its eastern distributing station; that he found nothing but a 37¢ rate published from Kiefer to Port Arthur, and asked that it be arranged to publish a 33¢ rate, the same as the northbound rate from Port Arthur, to Tulsa. He stated that if the movement proved satisfactory he was sure there would be more of it, and that he

believed he could induce the Kansas City Southern to participate in the 33¢ rate. (Ex. 85, Vol. II, p. 1363.) On January 18, 1914, Ellis wired Mitchell of the Kansas City Southern:

Requested Powers docket rate 33¢ Kiefer to Port Arthur on *gasoline* for coastwise shipments. He has wired you and Christian for concurrence. Hope you will concur. Answer. (Ex. 90, Vol. II, p. 1366.)

On the following day, January 19, Ellis wired Mitchell:

Exchange telegrams relative 33¢ rate Kiefer to Port Arthur in addition to this southbound rate we are figuring on moving about fifty cars per month or more of *naphtha* Port Arthur to Kiefer have talked with Powers St. Louis long distance and he will make additional request on Leland to-day as separate proposition that same be docketed for San Antonio meeting this will permit of majority cars moving under load both ways want you to favor this and use your influence with other lines am trying to get you long distance. (Ex. 91, Vol. II, p. 1366.)

On the same day Ellis again wrote Powers stating that they were figuring on from 50 to 75 cars of *naphtha* per month from Port Arthur to Kiefer, and that he found the existing rate of 43¢ per 100 pounds was prohibitive, and requested a 33¢ rate; that there was then a 33¢ rate on *refined petroleum and its products* from Port Arthur and West Port Arthur to Tulsa, and that they should have a rate not to

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 exceed that rate to Kiefer, and that "This naphtha is being moved from Port Arthur to Kiefer to be further refined at that point in connection with products now at Kiefer and *the outbound shipments will consist of gasoline*, and for each car of naphtha moved into Kiefer there is approximately *two cars of gasoline* outbound"; and he asked that the matter be quickly disposed of, adding, "This is absolutely new business." (Ex. 92, Vol. II, p. 1367.) This letter related solely to northbound shipments, and the writer did not hesitate to state just what the product was, and what would be the resultant product after treatment at Kiefer. Whether anything came of the application at that time is not disclosed; but on January 19, 1915, Mr. Christian, representing the Sunset Central Lines, wrote Mr. Ellis with reference to an application made in a conversation on the previous day for 15¢ rate on naphtha from Port Arthur to Kiefer, saying:

In view of this commodity *having passed beyond the crude state* it necessitated giving consideration to a reduction in the refined product. The current maximum rate between Texas points on refined oil is 25¢, which figure we indicated should at least be the minimum from Port Arthur to Kiefer. Definite advice has now been received indicating application of Texas lines to the Railroad Commission of Texas contemplates minimum rate on refined oil of 30¢ per 100 pounds; therefore it is wholly inconsistent to establish from Port Arthur to Kiefer a lower figure, as by so doing

it would jeopardize our application to the Texas Commission, thus limiting our earnings on the entire traffic moving between Texas points. (Ex. 93, Vol. II, p. 1368.)

And he suggested that as the existing rate was 33¢, and the conditions precluded the publishing of less than 30¢, it had occurred to him that he, Mr. Ellis, would not insist upon a disturbance of the rates for such a small difference. (Ex. 93, Vol. II, p. 1368.) The statement that the naphtha moving north "had passed beyond the crude state" is important, because it shows that the agents of the carriers could not have regarded the product in question as "unrefined" naphtha. On February 9, 1915, Mr. Ellis wrote Mr. Christian and also Mr. Reilly of the Frisco Lines:

I have gone into this matter from all angles and am going to ask that you arrange for the publication of 30¢ from Port Arthur to Kiefer and 30¢ Kiefer to Port Arthur, and 25¢ from North Fort Worth to Kiefer and from Kiefer to North Fort Worth, applying on naphtha and gasoline. (Ex. 88, Vol. II, p. 1365.)

The designation "gasoline" undoubtedly refers to the product in question, as the record shows that it is the only product moving south from Kiefer to Port Arthur to which such a name could apply. On March 18, 1916, Reilly wrote Ellis:

Your application has been given careful consideration, and this is to advise that in view of the present conditions, that of our traffic not yielding sufficient revenue to pay cost of operation and the further fact that we are

now endeavoring to increase rather than reduce rates, it will be impracticable to establish the rates at this time which you propose. (Ex. 89, Vol. II, pp. 1365-66.)

On May 29, 1916, Powers wrote Ellis:

Some one has suggested cancellation of item 2546-B, Supplement 40, SWL Tariff 26-T, offering as an excuse that continuation of this figure may jeopardize rates of 27 and 39 cents, respectively, to Texas common point territory. We shall be governed by your requirements in the premises as to the cancellation of item 2546-B and shall thank you to fully advise by return mail. (Ex. 86, Vol. II, p. 1364.)

It was admitted that that item referred to a rate on gasoline southbound from Kiefer and elsewhere to Port Arthur, Texas. (Vol. 1, p. 366.)

On June 5, Ellis replied:

We do not want this rate canceled, as it is in daily use. We are now moving about 18 cars per week on this rate. (Ex. 87, Vol. II, p. 1364.)

On May 16, 1916, Ellis wrote Reilly confirming a wire requesting a 17¢ rate applying north and south between Port Arthur, West Port Arthur, and Kiefer, and described the products to be moved as follows:

All of our products from Port Arthur and North Fort Worth is an unfinished product *and is passed through the refinery at Kiefer; and the product secured from this partial refining at Kiefer is an unfinished product*

and is transported to our Port Arthur refinery, and at that point *further refined*, and we are entitled to the unrefined rate as outlined above. (Ex. 97, Vol. II, pp. 1376-7.)

And on the same day Ellis wired Reilly:

Will you please arrange through Southwestern Committee for publication seventeen cent rate *crude unfinished naphtha* Port Arthur West Port Arthur to Kiefer and Kiefer to Port Arthur West Port Arthur and twenty cents from North Fort Worth to Kiefer and Kiefer to North Fort Worth on same relative basis now published in item thirty twenty two half supplement forty one Leland's twenty-six tee. (Ex. 98, Vol. II, p. 1377.)

The description given in this letter and telegram would certainly not put an agent on notice that it was expected to ship under the rate applied for a product containing no impurities, and which was sold and shipped as gasoline when mixed with a similar product to reduce its specific gravity.

But Mr. Powers testified that he conversed with Mr. Ellis, and that Ellis explained "that it was a low-grade article to be shipped and treated and re-shipped" (Vol. I, p. 565); and the witness also stated that he had then had no experience in refining or in the products made by refineries (Vol. I, p. 566). Mr. Reilly (improperly addressed as Mr. Powers) testified that he thinks the wire to him from Ellis dated May 16 (Ex. 98, Vol. II, p. 1377) related to the publication of rates from Oklahoma to



Baton Rouge, and the following colloquy passed between the court and the witness:

The COURT. Now, do you know? Did you know or go on the representations of the statements made there, or did you know of your own personal knowledge?

A. *We followed the statements of the tariff preceding us from the other Oklahoma producing points. Reproduced what was ahead of our line.*

The COURT. You took the statement what they wanted to put on was the same product these items covered?

A. We did not necessarily take this statement. We were requested to put in a rate on crude naphtha or unrefined naphtha or unfinished naphtha, I do not recall which. We put it in on the regular basis.

The COURT. Without any investigation of what it was?

A. Well, your honor, that is impossible. We can not go out into the field. We don't know what is being shipped. We are hundreds of miles removed from the shipping point. (Vol. 1, p. 571.)

And this witness further testified:

*In establishing the rate from Kiefer, we had in mind the tariff rate that had been published from Oklahoma and Kansas to Baton Rouge.*

The COURT. And the decision of the Interstate Commerce Commission?

A. *That was carried by the lines originally in publishing the rate to Baton Rouge. If I may*

be permitted to explain the rate-making basis—

The COURT. Now, I will just permit you to state that you had those before you when you did that.

Q. Well, in the establishment of the Baton Rouge rate you had the Commission decision as a basis; is that correct?

A. Yes, sir.

Q. That was the case, also, as to the Coffeyville rate, established some years prior?

A. I don't recall, the Frisco not being a line between Muskogee and Coffeyville, whether we established that rate.

Q. But in the establishment of the Baton Rouge rate, you had the order as the basis for the establishment of the Baton Rouge rate?

A. The guiding point of the railroads in publishing the rate on naphtha.

The COURT: After rates were made, then it was up to the shippers to ship in accordance with them?

A. Yes. (Vol., I pp. 574-5.)

It appears, therefore, that the rate in question was based on the rate then existing from Oklahoma points to Baton Rouge, and that rate was based on the rate from Muskogee to Coffeyville, which was fixed pursuant to the opinion of the Interstate Commerce Commission in *National Refining Company v. Missouri, Kansas & Texas R. R. Co.* (23 I. C. C. 527). And the Court of Appeals in its opinion declares that—

In the light of the ruling of the Interstate Commerce Commission in the *National Refin-*

ing Company case, the rate on unrefined naphtha theretofore given by one of the carriers to Baton Rouge on a commodity *shown to be substantially the same as the condensate of the Gypsy Company's plants*, and the testimony in this case, we think the insistence (that the conduct of the defendant was fraudulent) groundless and must have been highly prejudicial. (Vol. II, p. 1690.)

That the finding of the court that the product here shipped *was substantially the same* as the product there considered by the Commission is wholly unjustified and erroneous is perfectly apparent from the description of the product given by the Commission in its opinion. A certain product was shipped from Muskogee to Coffeyville, and the railroad charged the rate applicable to *refined* oil, and the petitioner claimed it should have been transported at the rates applicable to *crude* oil. The Commission first mentioned the product as "a certain distillate of petroleum oil consisting of the lighter ends of the crude oil" (Ex. 99, Vol. II, p. 1378); and in describing it the Commission said:

The product that was shipped seems to have no distinct commercial designation or trade name; by complainant it is referred to as "crude product"; one of the shippers described it in the bills of lading as "crude benzine"; the carriers classed it as refined oil. The evidence shows that the crude oil had undergone a skimming process and that this commodity was one of the two resulting products. The

Muskogee crude, as it comes from the well, has too low a fire test to be salable as fuel oil; by the skimming process the lighter ends of the oil are extracted, and the heavier residue becomes marketable as fuel oil.

This skimming process is accomplished by distillation carried just far enough to separate the lighter from the heavier oil, the former amounting to about one-fourth part of the oil. The extracted product, though not separated in accordance with any specifications, may, therefore, properly be roughly described *✓ as a light-end distillate*, and that designation will be used in this report. It was this product that was shipped, and complainant's testimony was to the effect that *it had no commercial value except for refining purposes; that at complainant's refinery it was kept separate from the crude oils and refined into gasoline, naphtha, turpentine substitute, and a residuum sold as fuel oil.*

For refining purposes this light-end distillate commanded a higher price than the crude oil from which it was extracted. Complainant's president testified that the price of the Muskogee crude oil at the time of purchase was 2 cents per gallon; he was not certain, but thought he paid 3 cents for the light-end distillate. The information of defendants was to the effect that the price was  $3\frac{1}{4}$  cents. Complainant's president testified that, at the time of this purchase, he was in special need of material for lighter-end products, and for this reason was willing to pay a price higher than is customary for this distillate. Under

ordinary circumstances it would be more profitable to use a straight crude oil. (Vol. II, pp. 1380-1.)

It was held that neither rate was applicable, and that a reasonable rate would not have exceeded by more than two cents the rates applicable to crude oil; and that relationship was established for future shipments. *The product there in question was practically worthless until it was refined and converted into other products. In fact it was crude naphtha, or the "naphtha fraction" heretofore described, which by distillation is separated into gasoline, benzine, and painter's naphtha.* If it was not the exact equivalent of the "naphtha fraction" described, it was not so valuable, because a less per cent was separated from the crude oil by the skimming or light distillation process used.

Therefore the railroads had no intention in publishing a rate on "unrefined naphtha" to carry under that rate a blend of casinghead gasoline and painter's naphtha, a product resulting from the distillation of "crude" or "unrefined" naphtha.

#### Testimony of experts

The defendant introduced a number of experts who testified very fully upon the following subjects:

##### What is Gasoline

Mr. Tabor explained in detail how crude oil is refined, and said that in the early days of the industry about one-half of one per cent of the crude oil was converted into gasoline, which was used by country people for lighting their houses; and that for a long

time that was the only substance called gasoline. This continued until automobiles came in use, and thereafter it was used in different mixtures. He then proceeds as follows:

And that continued until by and by the automobiles came along so fast it run the gasoline—there wasn't gasoline enough to supply them and then they had to go to the naphtha to get something heavier, *but they called that gasoline*, because the people who used gasoline knew nothing about the designations, proper designations, of petroleum, and their carburetors at that time had been made to use this very light material; so the people that had the material didn't know it was naphtha; *they called it gasoline*. Then the manufacturers had to make their carburetors so they would burn the heavier material, until finally, in 1885, according to the census report, where one part in thirty was naphtha, the whole naphtha product was prepared, that is, thirty parts of naphtha, *and they called it gasoline*, and more than that, they put some kerosene in it, and that meant the automobile people had to change their carburetor to burn heavier and heavier material, *but they still called it gasoline*. That is the proper name for it isn't gasoline, *from the technical standpoint*. (Vol. 1, pp. 672-673.)

And in defining gasoline, he testified:

Gasoline in the strict technical sense of the word is the product which is substantially 76 to 80 gravity (exactly the gravity of the product in question) as described and refined

✓ distillate from petroleum which is suitable for use in carbureting air for making a gas suitable for burning in private dwellings.

Q. That is what the article of commerce known as gasoline is?

A. That is *one* of the articles of commerce known as gasoline for that particular purpose; *that is the original name. Now, there are other articles of commerce, and that is what has been developed by the automobile business.* For that purpose we will say that

gasoline is a product, a combination of products of naphtha produced from crude oil, natural gas, casinghead gas, and other source which are made suitable for use in the general run of automobiles which use suction carburetors. It has to be suitable for such use, that is not material that will run one make of car but any make of car that comes along equipped with the ordinary suction carburetor to-day. (Vol. 1, p. 678.)

And in response to the question whether the material produced at Kiefer and Drumright was gasoline, he says:

It doesn't fulfill either of the specifications for gasoline which I have given. I do not consider it gasoline. I consider it unrefined naphtha. (Vol. 1, p. 678.)

The expert Burrell, when asked to define gasoline, says:

I prefer to define gasoline as a liquid inflammable substance or mixture of hydrocarbons suitable for use in an automobile engine of to-day. Now, I should say that



certainly over ninety-five per cent of the gasoline that is used to-day is used in automobile engines. A small amount is used in making gasoline gas for lighting isolated residences, and similar places, and a small amount is used in stoves. Perhaps a better definition would be, an inflammable liquid, a mixture of hydro-carbons suitable for use in any kind of vaporizers. (Vol. 1, p. 691.)

So, while Tabor thinks a product should be called gasoline if it will run *all makes of automobiles*, Burrell thinks it should not be so called unless it is also suitable for use in vaporizers used for *all other purposes*. If this be the correct definition there is no such thing as gasoline, because it is apparent from Tabor's evidence that there is no product that can be successfully used in all kinds of vaporizers. According to this theory oil used to lubricate watches is not oil because it can not be successfully used to lubricate farm tractors.

Burrell further says that there is a great deal of confusion in the nomenclature of the petroleum industry, more in the popular mind "than in the scientific literature, although in the literature some confusion exists." (Vol. 1, p. 692.) And after testifying that the product shipped from Kiefer, Jenks, and Drumright to Port Arthur is not gasoline, he says:

*It is very popularly called gasoline—I have so called it myself.* (Vol. 1, p. 694.)

And he admits that in a book written by him he used the word "gasoline" almost entirely, but on practically the last page the statement is made that

the word "gasoline" as used therein is very loosely applied, and that the material under consideration does not come under that category until properly prepared for market. (Vol. 1, p. 694.)

The expert Garner testified that in the strict technical sense gasoline "*would be that low boiling portion of naphtha having a gravity from 76 possibly to 82 and usable for the purpose of illumination.*" This is an exact description of casinghead gasoline. He finally says, however, that gasoline is a term applicable to products of petroleum to be used for vaporization purposes; and as a commercial term relating to an article of commerce it is a finished product as distinguished from an unfinished one; and he does not consider it properly can be called gasoline unless it can be used for vaporization purposes, such as running a car or in a gasoline stove; and that the product in question is not in any proper sense gasoline. (Vol. 1, pp. 710-11.) He sticks to this statement after it was demonstrated that it would successfully operate a Pierce-Arrow car (Vol. 1, p. 846), because he says:

A Pierce Arrow car is a very exclusive car; it is not a car that represents any very considerable portion of the great percentage of the cars; that is the first one, it is not a car in common usage. It is used by people who are very wealthy. In the second place, it is a car that is nearly mechanically as correct as a car can be built. (Vol. 1, p. 850.)

The witness does not, however, undertake to point out exactly what kind of a car must be perfectly

operated and how wealthy its users must be before the fuel with which it is operated can be properly designated as gasoline. Manifestly, according to Doctor Bacon, the fact that a fuel will operate a Ford is no evidence that it is gasoline, because he says "a Ford will almost run on rainwater." (Vol. 1, p. 765.) But Doctor Garner does not agree with Doctor Bacon with reference to the superior virtues of a Ford. (Vol. 1, p. 850.)

Doctor Schock says that "gasoline is a material or substance that is not definable in just a few words"; and again, "The material used to-day under the word gasoline is not identical with the material that was called gasoline years ago." He further says:

There is a gasoline that existed at that time. It was used in gasoline stoves and that was and did not differ exceedingly from the present gasoline, but in another way it does. The quality and the volatility has been steadily lowered in order to meet the greater demand that at one time the time that your honor refers to gasoline it was a product that was not exactly the same; I won't say that twenty years ago gasoline was a different material, but it was a gasoline that had a lower boiling point, was more volatile as a whole than the present gasoline. (Vol. 1, pp. 718-19.)

The expert Miller says:

Gasoline I define as being generally that fraction of crude petroleum or similar products lying within the range of boiling point

and other necessary physical tests which will *satisfactorily and economically* operate an internal combustion motor. (Vol. 1, p. 738.)

This expert introduces another element which he appears to regard as essential for a fuel to be defined as gasoline, and that is that it will operate a motor *economically*.

Dr. Bacon says:

My definition for gasoline would be this, gasoline is a mixture of combustible liquids, a finished product that will *satisfactorily* run a motor car. (Vol. 1, p. 750.)

He does not add "economically"; but presumably the operation would not be satisfactory unless it was economical. And after explaining how the use of automobiles has dominated the petroleum industry, he says:

Consequently, I am inclined to believe if anything would come along to-morrow that would properly run an automobile engine and it was derived in large part from petroleum, *that that material would properly be called gasoline*. (Vol. 1, p. 751.)

And—

I haven't any doubt that in the next three or four years, possibly sooner, new material will come in, and if those materials go in with petroleum distillates, *I believe that that product is correctly called gasoline*. (Vol. 1, p. 751.)

And he further says:

I thought a great deal since this case came up, what a proper definition of gasoline was,

and it is very difficult to make one. (Vol. 1, pp. 751-2.)

According to this definition, kerosene is gasoline, because practically all tractors and some motor cars are operated with kerosene.

Whether the product in question should be defined as "unrefined naphtha"

While stating that "unrefined naphtha" is an appropriate name, Doctor Burrell adds:

If I had been asked to select a name for this I don't say I would have used unrefined naphtha, perhaps unfinished naphtha, but I will say unrefined naphtha is a proper name and gasoline is a wrong name. (Vol. 1, p. 694.)

But he really likes the word "condensate" in speaking of natural gas gasoline. (Vol. 1, p. 695.)

And he finally says:

I will admit that this natural gas gasoline is a very fine material; it has helped out the automobile industry; it is very valuable, but casinghead gasoline helps the naphtha just as much as the naphtha helps the other. They are invaluable to each other. You can not say that this material is not high grade (I don't mean it is low grade). It is a very valuable commodity.

Q. Now, in what respect is it unrefined?

A. It is not ready for the market. (Vol. 1, p. 708.)

And Dr. Miller says:

I consider it a proper designation, the name of unrefined naphtha; *I might personally want*

*to call it something else, to be a little more descriptive.*

Q. What would you call it?

A. *As unfinished naphtha or unfinished gasoline blend or unfinished casinghead blend or unrefined casinghead blend.* (Vol. 1, p. 741.)

Doctor Burrell admits that he never used in any of his works the term "unrefined naphtha" (Vol. 1, p. 706), and he also admits that in a paper prepared by him entitled "Technology of Natural Gas as Applied to Making Gasoline and Absorption Processes" he says, "as a matter of fact, blended casinghead gasoline finds thousands of satisfied users." (Vol. 1, p. 706.)

Dykema, an expert introduced by the Government in rebuttal, who had formerly been connected with the Bureau of Mines, testified that he had never seen casinghead gasoline called by the name of "unrefined naphtha" in any of the technical works that he had read, and that while he was connected with the Bureau of Mines he had visited every casinghead field in the country, and that he had never heard the product in question called "unrefined naphtha" (Vol. 1, p. 856); and that the product produced by compression of natural gas should be called gasoline regardless of gravity; and that he had never anywhere heard it called "unrefined naphtha" prior to the beginning of this suit (Vol. 1, p. 840).

De Barr, another expert introduced by the Government in rebuttal, testified that casinghead gasoline is not properly designated "unrefined naphtha"

(Vol. 1, p. 879); that it is perfectly refined when it comes from the earth; that the fact that it is blended in order to lower its gravity does not justify calling it "unrefined naphtha," and that he has read many scientific works on the subject and he knows of none that so defines casinghead gasoline (Vol. 1, p. 881).

#### What constitutes refining

The defendant's experts, Taber and Burrell (Vol. 1, pp. 689-90), both testify that the blending of casinghead gasoline with naphtha to produce a mixture that will meet specifications is a process of refining. Taber says:

The ordinary meaning of refining is to purify, make fine, remove extraneous matter; remove things that don't belong in the matter. (Vol. 1, p. 680.)

He illustrates by supposing that one is allowed in shipping grain to permit one pint of chaff to be shipped with every bushel. If one had a bushel of grain that contained a quart of chaff he could do either of two things, take out a pint of chaff or put in another bushel of wheat. (Vol. 1, pp. 680-1.) However, this illustration does not apply to the product here in question, because there is nothing to be taken from either the casinghead gasoline or the naphtha with which it is mixed. Both are already in a refined condition; and the sole purpose of mixing or blending is to get a substance that will meet specifications as to chemical and physical quality. An exact illustration would be to suppose that a miller orders



wheat that will produce flour having specified qualities. The dealer has some wheat too soft and other wheat too hard to produce the flour desired. But he complies exactly with the order by mixing the two kinds of wheat in proper proportions. By so doing does the dealer "refine" the wheat? And isn't each variety "wheat", and must it not be shipped as "wheat," though that particular order can not be filled with either of the varieties?

+ The Government's expert Dykema says that blending of the two products is not a refining of casinghead gasoline, but merely mixing. (Vol. 1, p. 856.) And Doctor De Barr says that the blending of casinghead gasoline with refined naphtha does not tend to refine the gasoline. (Vol. 1, pp. 880-1.)

Dykema says that casinghead gasoline is refined in the ground, and he explains the process (Vol. 1, pp. 833-34), which he describes as practically the same process that is carried on in a still (Vol. 1, pp. 837-8.). The defendant's expert Burrell says that casinghead gasoline "is essentially the result of a distillation operation in the ground."

The COURT. Then there is a process of refining in the ground?

A. That is one of the processes of refining; yes, sir. (Vol. 1, p. 693.)

#### **Experiment with product in operating cars**

The expert, Burrell, in his examination in chief, describes his experience in endeavoring to operate a Packard and also a Dodge car with, first, casinghead

gasoline, and then with the blended product; and in experimenting with the Packard he says they put some curb gasoline in the carburetor, but it ran only about a hundred yards and stopped, and they had the same experience with the Dodge car (Vol. 1, p. 698). But he unconsciously gave an explanation of just why these machines did not operate. On cross-examination he makes the following explanation of a passage which appeared in an address previously delivered by him:

Q. In that work did you say, "Natural-gas gasoline is not only valuable because of the product itself, but because it is of very high grade—so high, in fact, that it is not economical to use it alone, but so it is mixed with low-grade refinery naphtha and the so-called cracked gasoline, a great deal of which is being made at the present time"?

A. I did, and I will tell you what I meant by the term "high grade." *Automobile makers have changed their carburetors, as fuel became scarcer and scarcer, until to-day that carburetor is made to suit a much more lower-grade fuel than the high-grade fuel of a few years ago; so to-day the low-grade fuel is a high-grade fuel, because that high-grade fuel of a few years ago will not operate an automobile satisfactory.* (Vol. 1, p. 707.)

On cross-examination he admits that he did not adjust the carburetor. (Vol. 1, p. 802.) *Therefore his whole trouble was due to the fact that the grade of fuel was too high for the carburetor as adjusted.*

In rebuttal the witness Downing testified that for six years he made it a practice to use casinghead gasoline to operate a car. (Vol. 1, p. 813.)

Dykema describes a test which was made during the trial. *The fuel first used was strictly casinghead gasoline so weathered as to make it as near as possible like the gasoline that had been shipped from Jenks.* The experiment seems to have been made by parties representing both sides. Both a Packard and a Pierce Arrow were used; and they were put in condition satisfactory to representatives of both sides, and the witness Dykema rode in the Pierce Arrow. He said it started without any difficulty, but stalled at a point about seven miles from Jenks toward Kiefer; and after relieving the pressure and cooling the engine somewhat they started, and went to a point within a hundred yards of the plant, and after again relieving the pressure they drove in. No adjustment whatever had been made of the carburetor; and it was his opinion that if it had been adjusted the car would have run steadily. (Vol. 1, p. 829.)

*At Kiefer employees of the plant made a blend of thirty per cent naphtha and seventy per cent gasoline, which was weathered down with steam in the same manner it was weathered at Jenks, until it reached a vapor pressure which was similar to that mixed for shipping.* The cars were then drained to the satisfaction of representatives of both parties. He says the car "*Didn't make a single stop,*" and *they had no trouble whatever with the engine. They*

made the 19 or 20 mile trip between 12.20 and 1.03, and sometimes ran 35 miles per hour, as fast as they regarded it safe. (Vol. 1, pp. 830-1.) There is no testimony with reference to the operation of the Packard, in which apparently the defendant's representatives rode. Presumably, therefore, there was no trouble in the operation of that car.

The Government's expert, De Barr, testified that three years previously he drove a Ford car several hundred miles on compression gasoline, and also drove a Dodge roadster with compression casing-head gasoline a week or two. He used casinghead gasoline because the company was letting him have it for nothing. (Vol. 1, pp. 882-3.) He thinks, however, that because of its volatility he would not let his wife use it unless she were first familiarized with it.

#### Definitions of gasoline

The Standard Dictionary defines gasoline as:

A colorless, volatile, inflammable product of the distillation of crude petroleum, having a specific gravity of .629 to .667 (95° to 80° B.). It is used as fuel in vapor-stoves and for carbonizing air and water-gases.

We find *gasoline* in use in our State in the hands of persons who do not know that the vapor arising from it, when mixed with the atmosphere in the proper proportion, is one of the most dangerous explosives.—Rep. Sec. of Mich. St. Bd. of Health, '88, p. 200 (89).

Webster defines gasoline as:

A volatile, inflammable liquid used as a solvent, for oils, fats, etc., as a carburetant, and to produce heat and motive power.

The Century Dictionary definition is:

A volatile liquid product commonly obtained from the distillation of petroleum. Its specific gravity is .629 to .6673 (95° to 80° B.). Used for saturating air or gas in gas-machines or carburetors, and in the engines of motor vehicles.

The Encyclopedia Americana states that the specific gravity of gasoline ranges from 58 to 90.

Casinghead gasoline is a distillate of crude petroleum, the distillation taking place by natural processes in the earth. (Vol. 1, pp. 837, 880.) In the earth, the oil is under a pressure, commonly called rock pressure, which raises the boiling point of the various components of the oil and causes the formation of a gas, called casinghead gas. The condensation of this gas produces gasoline which is in a pure, refined condition and which needs no refining. (Vol. 1, pp. 837-839.) It is a high gravity gasoline, its gravity, as it comes from the compressors (prior to blending or weathering) being as high as 88° to 90° B. (Vol. 1, p. 242.) Blending and weathering reduces the gravity to as low as 60.9 B. It thus appears that the commodity shipped by the defendant is strictly in accordance with the dictionary definition of gasoline, which must be taken as the common acceptance.

## CONCLUSIONS OF FACT

From the foregoing evidence the following inferences of fact must be drawn:

1. That before the advent of the automobile the only product known as "gasoline" contained the same specific gravity, and possessed substantially, if not exactly, the same characteristics as the product which defendants shipped as "unrefined naphtha."

2. That from the enormous demand for fuel that will vaporize and explode caused by the development of the gasoline motor, there has been produced a number of varieties or grades of such fuel, all possessing the same general characteristics, and so far as this record shows the same chemical elements, but differing in volatility, some kinds being better adapted to certain makes of vaporizers than to others; that the quality of the fuel depends primarily upon its specific gravity, and the quality desired by a purchaser is obtained by blending those having different gravities; that the product in question has a high specific gravity and is a high-grade fuel; *and that all varieties of this class of fuel have always been known in common parlance as "gasoline," and so designated in all treatises upon the subject, except now and then a writer has suggested that the name did not apply in its technical sense.*

3. That defendant always called this product "gasoline" in its correspondence, and shipped it as gasoline up to the time the "unrefined naphtha" rate went into effect, and continued to so bill and ship it elsewhere than to West Port Arthur.

4. That no other producer supposed that the "unrefined naphtha" rate had any application to this product, and all of them continued thereafter to bill and ship it as "gasoline," the defendant being the only producer that ever at any time billed and shipped it under any other designation than "gasoline."

5. That in the common parlance of the trade, as well as by shippers, except by defendant after December 2, 1916, it was always known as "gasoline."

6. That it has never been called by any one at any time, in either common parlance or in scientific works, "unrefined naphtha," except in connection with shipments made by defendant to West Port Arthur after December 2, 1916.

7. That defendant's own experts, while saying it will answer to the name "unrefined naphtha," yet clearly regard some other designation, such as "unfinished naphtha," or "a distillate," as preferable.

8. That in fact it is not "unrefined naphtha" in any sense of the term. It is not "naphtha"; but is either casinghead gasoline, which is not known as naphtha, or a blend of such gasoline and painter's naphtha. And it is certainly not "unrefined." The painter's naphtha is the product of double distillation, one separating the "naphtha fraction" from the petroleum residuum, and the other separating the crude naphtha, or "naphtha fraction," into three elements commonly known as gasoline, benzine, and painter's naphtha, each of which is a *perfectly* refined product. And the casinghead gasoline has been



refined first in the earth, and then by eliminating the moisture and the more volatile elements by weathering and compression.

9. That the product is really gasoline. It contains the same constituent parts and the specific gravity and color of the original highly volatile gasoline, and vaporizes and explodes as gasoline, and will operate some makes of cars reasonably well without readjustment of carburetors, and could be successfully used in operating any car if equipped with a suitable carburetor.

10. That defendant instigated the publication of the rate on "unrefined naphtha," intending at the time to take advantage of it and ship under that designation this product which had always theretofore been known and shipped as "gasoline"; and

11. That the railroad companies understood when the rate was put in that it would apply to crude naphtha, or a product similar thereto, to wit: the product the Interstate Commerce Commission had considered in *National Refining Company v. Missouri, Kansas and Texas Railroad Company*. (Rec. Vol. 2, p. 1378.)

#### **Legal principles controlling application of rates**

This product had to be shipped from Kiefer, Drumright, and Jenks to West Port Arthur either as "gasoline" at a 33-cent rate or as "unrefined naphtha" at the 19½-cent rate. It could not legally be shipped under both rates. If the 19½-cent rate is applicable, the railroads discriminated against all

the other producers, and are liable to them to the extent of the discrimination, and are subject to prosecution for exacting an excessive rate. Under the

statute there can not be two rates on the same product between the same points over the same lines at the same time. *National Elevator Company v. Chicago, M. & St. P. Ry. Co.*, 246 Fed. 588, 592.

That rate is applicable in which the commodity is the more accurately described; and the question is, which designation is the more appropriate for the commodity defendant was shipping, "gasoline" or "unrefined naphtha?" That is a question of fact for the determination of the court, if there is no conflict in the evidence, or if the name of the article is so well known that no doubt can exist that one designation and not the other must apply. If, on the other hand, any doubt does exist as to which is the true name, the question must be determined by the jury. The important question here is, by what rule is it to be determined whether this commodity is more accurately described as "gasoline" or "unrefined naphtha?" Is the opinion of experts as to what *should* be called "gasoline" and what an absolutely scientific and technical definition should be to be treated as conclusive, or is at least consideration to be given to what those who produce, handle, ship and consume gasoline understand that word to mean? If any weight is to be given to such understanding, there was a question of fact for the jury. And furthermore, if but one inference can be drawn from the evidence, and that inference is that this commodity

was known as "gasoline," and not as "unrefined naphtha," in the common language of the trade and by those engaged in shipping it, we insist the trial court should have told the jury that the commodity was "gasoline;" and that no harmful error could be committed by the court in the admission of evidence, or in his charge to the jury, or in refusing to charge requests presented by the defendant, or by counsel in presenting the Government's case to the jury.

The following authorities correctly illustrate the rule by which the question of fact should have been determined.

In *Ohio Foundry Company v. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company*, 19 I. C. C. 65, 66, the question was, what rate was applicable to shipments which consisted of mixed carloads of articles claimed by the railroad company to be "gas grates," but which the Foundry Company claimed to be "gas fireplaces and grates, and iron fireplaces and grates designed for burning coal." There was a rate of \$1.45 on "iron fireplaces and grates for same, n. o. s., made of wrought or cast iron, also furnace grates, *gas grates* (boxed or crated); portable fireplaces and portable steam radiating mantels; iron linings; grate dampers, andirons (iron), o. r. b., and chafing," and a rate of \$1.35 on "iron fireplaces and grates for same n. o. s., made of wrought or cast iron; also furnace grates," and the same rate on "portable fireplaces and portable steam radiating mantels, o. r. b." Evidence was taken showing that fireplaces and grates for the use of gas were made in the

same factory that made fireplaces and grates for the use of coal and wood; that they were of the same make and style, were shipped in crates of about the same dimensions, and that they were shipped in the same cars and from and to the same points. In passing upon the question, the Commission said:

The evidence shows that "gas grates" is a trade name which has reference to and includes fireplaces made of iron for the burning of gas. We do not think that the declaration by the shipper in the invoices that the shipments were "gas grates" is conclusive of the question of what the shipments actually were. The tariff application is to be construed with reference to what articles actually comprised the shipments. There is no question that the shipments were mixed carloads of gas fireplaces and grates and coal fireplaces and grates. It is admitted by defendants that, if the shipments were fireplaces and grates for the use of coal or wood, the \$1.35 rate should be applied, but, it is asserted, that the fact that they contained gas grates removes them from the class taking the lower rate.

And it was held that the lower rate applied.

In *Pacific Coast Biscuit Company v. Oregon Railroad & Navigation Company*, 20 I. C. C. 178, 180, the Commission had under consideration what rate should be applied to a shipment of paper waxed with paraffin and used as an inside lining for cartons containing crackers and an outside wrapper for protection against moisture on packages exposed to a moist or damp climate. A rate of \$1.20 was applicable to

"Paper . . . wax or gummed paper" and also a rate of \$0.75 on "Paper. Wrapping paper, n. o. s." Evidence was introduced to show to what use this paper was put, and what was meant by "wrapping paper," and the names by which the paper in question was known. In deciding that the higher rate applied, the Commission said:

As a matter of tariff interpretation, we are constrained to hold that a specific rate having been established on wax paper, defendants were compelled to apply that rate to all grades and qualities of wax paper regardless of the use to which it was put. Although this paper was admittedly used in part as an outside wrapper, it is clear that it is a wax paper as *that term is understood in the trade*, and it follows that the proper rate, under the tariffs in force, was applied by the carriers.

In *Western Mantle Company v. Spokane, Portland & Seattle Railway Company*, 20 I. C. C. 643, 645, the shipments in question consisted of material for use in the manufacture of gas mantles. In the freight bill the commodity was designated by the delivering carriers as "knit goods," "knit dry goods," "gas-mantle fabrics," "mantle gauze," and "dry goods," and in the invoices rendered by the manufacturer it was uniformly described as "mantle fabrics." The evidence showed that the shipments consisted of cotton knit fabrics or knitting-factory products used by the complainant as foundation material in the manufacture of gas mantles, and was referred to in the

trade generally as "knitting," but sometimes as "netting." There was a rate of \$2.20 on "netting, cotton, n. o. s., in boxes or bales," and a rate of \$3 on "dry goods, n. o. s., in bales or in cases." The carrier had collected the higher rate. After discussing the evidence, the Commission said:

In our opinion the commodity shipped was not cotton netting, *as that article is commonly known to the trade*; and, as a matter of tariff interpretation, we are of opinion that the term "netting, cotton, n. o. s.," is not properly descriptive of the shipments. In the absence of a provision specifically covering the commodity it was properly classed by the carriers as "dry goods, n. o. s.," and the lawful rate was applied.

In *Chicago, B. & Q. R. Co. v. Feintuch*, 191 Fed. 482, 488 (C. C. A., 9th Circuit), the question was whether show cases were furniture within the meaning of railroad tariff. On application to the Commission by the shipper it had been held that show cases fell within that description, and reparation was awarded, and this action was brought to recover the amount due as found by the Commission. The Court of Appeals said:

The witnesses are in hopeless discord in their opinions—experts on tariff rating, some of them are—touching whether show cases are articles of furniture. It seems to be conceded that show cases fall within the dictionary meaning of the word "furniture," *which would*

be the common acceptance. The Century Dictionary gives this definition:

"Furniture. (1) In general, that with which anything is furnished or supplied to fit it for operation or use; that which fits or equips for use or action; outfit; equipment; as, the furniture of a war horse, or of a microscope; table furniture . . . (3) Collectively and specifically—(a) Those movables required for use or ornament in a dwelling, a place of business or of assembly, etc."

Formerly, and even now, show cases of a certain type rested upon counters in business places, not in any way affixed thereto, and were used for the display of articles of merchandise kept for sale. More recently these cases are made to extend to the floor, and are used for the display of articles of merchandise and also for counters over which goods are sold, but, as we understand, are not in any way affixed to the floor or building, and hence can not be termed fixtures in any sense. They are "movables," and may be shifted from place to place, or even removed from the place of business, without the necessity of detaching them. In this sense, show cases are properly classified as furniture, and that, being the common acceptance of the term, should prevail over any technical meaning the word has acquired by tariff usage in the construction of tariff schedules. The schedules are published for the information of the public in general, who are not supposed to be cognizant of technical usage in rate problems, and it would be a snare to the unwary and uninformed to construe and interpret tariff sched-



ules by any such technical standard. It follows that the tariff in the present instance was properly interpreted.

*Lakewood Engineering Company v. New York Central R. Co.*, 259 Fed. 61, 62, 63 (C. C. A., 6th Circuit), was an action brought to recover a judgment for the payment of an excessive rate. The higher rate was upon "Tracks, portable railway, set up in sections," and the lower rate upon "New iron and steel rails and iron and steel railroad crossties, for export only." The articles shipped consisted of "two steel rails in parallel position, steel crossties riveted at each end thereof to the rails and fish-plates, with the necessary bolts for attaching the ends of the rails to the ends of those of the adjacent section," but the plates and bolts were not attached to the rails and were shipped separately. The lower court held as a matter of law the higher rate applied; and the judgment was affirmed by the Circuit Court of Appeals; but Judge Denison, speaking for the court, said:

We assume, for the purposes of this opinion, and without undertaking to decide whether the assumption should in some cases be limited or qualified, that if there were ambiguity as to the two tariffs, or if there were material uncertainty as to the proper trade definition of an article shipped, there would be an issue of fact, and the action of the court below would have been erroneous.

But in considering which rate was applicable, he said:

For the purposes of definition and classification a steam engine does not cease to be such because the governor is omitted, nor would shoes be anything but shoes if shipped without buttons or laces. These sections might have been provided with the bolts and plates, but one tie might have been left off, whereby the sections would not have been satisfactory for contract delivery until the missing tie had been supplied, but we think they would still be "sections of portable railway track;" and the same thought covers the deficiency which here existed.

So it may here be said that the fact that the commodity in question varies in some particulars from the product that will successfully operate a Packard car does not prevent its being properly called and shipped as "gasoline."

A similar rule has often been applied by this court in determining what rate applies on imports.

Thus, in *United States v. Isham*, 17 Wall. 496, 504, the court said:

X The words of the statute are to be taken in the sense in which they will be understood by that public in which they are to take effect. Science and skill are not required in their interpretation, except where scientific or technical terms are used.

In *Swan v. Arthur*, 103 U. S. 597, 598, it was said:

While tariff acts are generally to be construed according to the commercial under-

standing of the terms employed, language will be presumed to have the same meaning in commerce that it has in ordinary sense, unless the contrary is shown.

In *American Net and Twine Co. v. Worthington*, 141 U. S. 468, 471, the court said:

It is a cardinal rule of this court that, in fixing the classification of goods for the payment of duties, *the name or designation of the goods is to be understood in its known commercial sense, and that their denomination in the market when the law was passed will control their classification without regard to their scientific designation, the material of which they may be made, or the use to which they may be applied.*

And in *Hedden v. Richard*, 149 U. S. 346, the court said that the words used in customs tariff "*are to be taken in the sense in which they will be naturally understood by those to whom they are addressed.*"

X Under the regulations of the Interstate Commerce Commission the commodity shipped could not lawfully be transported under the designation "unrefined naphtha"

Section 235 of the Penal Code of the United States (35 Stat. L. 1134) provides that—

The Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives. \* \* \*

In conformity with this statutory direction, and under the additional authority of section 15 of the act to regulate commerce, the Commission formulated and promulgated, in 1910, a set of "Regulations

for the transportation of explosives and other dangerous articles." Such regulations of an administrative body, issued under the authority of a statute, have the binding force of law. *United States v. Eaton*, 144 U. S. 677; *United States v. Grimaud*, 220 U. S. 506; *Interstate Commerce Commission v. Goodrich Transit Co.*, 224 U. S. 194.

Important amendments of these regulations were made in 1914, 1916, and 1918. Rule 1824 of the regulations relates to the transportation of inflammable liquids and paragraph (k) of that rule relates particularly to liquid condensates from natural gas or from casinghead gas of petroleum oil wells—in other words, to casinghead gasoline.

Paragraph (k) of rule 1824, effective except as noted therein May 15, 1916, in force at the beginning of the period covered by the indictment (December 2, 1916), and remaining in force without change until September 1, 1918, will be found on pages 1079–1080 of the record. On September 1, 1918, paragraph (k) of rule 1824 was amended. The amended rule is found at pages 1259–1260 of the record.

Apparently the Court of Appeals did not consider the important bearing of these regulations upon the question at issue, i. e., whether the commodity shipped was gasoline or unrefined naphtha, and therefore it apparently did not appreciate that the testimony of defendant's expert witnesses that the commodity in question was not gasoline was at variance with the views of the Commission as ex-

pressed in the regulations, that the product of the compression of natural gas or the blending of liquefied petroleum gas with refinery gasoline or naphtha is gasoline.

The attention of the court is called particularly to the "List of principal dangerous articles," as published in both sets of regulations, that is, both the regulations of May 16, 1916, and those of September 1, 1918. These lists will be found at pages 1070-1076 and 1248-1255 of the record. These lists show the names of *well-known* articles in general use, other than explosives, that are dangerous, each list being preceded by a statement to that effect (see pages 1068 and 1220 of the record), rule 1807, which reads:

#### LIST OF PRINCIPAL DANGEROUS ARTICLES

1807. (a) The following list shows the names of well-known articles in general use, other than explosives, that are dangerous; \* \* \*

Included in the lists are "gasoline" and "liquefied petroleum gas." Liquefied petroleum gas is the liquid condensate from natural gas or from casing-head gas of petroleum oil wells (casinghead gasoline), whose vapor tension exceeds 10 pounds per square inch. (Rule 1824-k.)

Opposite the word "Gasoline" as published in both lists appears the following note, the significance of which will not escape the court:

Gasoline made by compressing natural gas or by blending liquefied petroleum gas with

refinery gasoline or naphtha may be described and shipped as gasoline, provided the vapor pressure does not exceed 10 pounds per square inch.

We submit that by this expression the commission recognized that casinghead gasoline, whether unblended or blended with refinery gasoline or naphtha, is gasoline. The recognition that unblended casinghead gasoline is gasoline is embodied in the first clause, "*Gasoline made by compressing natural gas.*" The recognition that casinghead gasoline when blended with refinery gasoline or naphtha is gasoline is embodied in the words "Gasoline made \* \* \* by blending liquefied petroleum gas with refinery gasoline or naphtha."

Another feature of the lists of dangerous articles whose significance is highly important is that *unrefined naphtha* does not appear in the lists. Is it not a matter of plain, common sense that if the commodity which is the subject matter of this case were unrefined naphtha it would be shown in these lists of names of well-known articles in general use that are dangerous? The commodity in question surely must be regarded as a well-known article when it is taken into consideration that in 1915 over 65,000,000 gallons of it were produced in the United States, and between 80,000,000 and 100,000,000 gallons in Oklahoma and California alone in 1917, and 300,000,000 gallons in 1919. (See page 2, Dykema's Bulletin and Rec. 690.) Not only does *unrefined naphtha* not appear in the lists of dangerous

articles as published in the regulations, but *that term does not appear anywhere in the regulations.*

There is no authority in either set of regulations to describe or ship this commodity as "unrefined naphtha." Paragraph (k) of the regulations of May, 1916, provided in part as follows:

Liquid condensates from natural gas or from casinghead gas of petroleum oil wells whose vapor tension exceeds 10 pounds per square inch must be described as liquefied petroleum gas. \* \* \*

When the condensate, blended or unblended with other products, has a vapor tension not exceeding 10 pounds per square inch, and is shipped as "Gasoline" in an ordinary tank car, 60-pound test class, defined in Master Car Builders' Association Specifications for Tank Cars, the safety valves of such a car must be set to operate at 25 pounds per square inch, with a tolerance of one pound above or below. \* \* \* (Rec. 1079.)

The amended regulations of September 1, 1918, provided:

Liquid condensates from natural gas or from casinghead gas of oil wells, made either by the compression or absorption process, alone or blended with other petroleum products must be described as liquefied petroleum gas when the vapor pressure exceeds 10 pounds per square inch.

When the condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding 10 pounds per square inch,



it must be described and shipped as gasoline, casinghead gasoline, or casinghead naphtha.

It seems clear that under the earlier regulations there were but two terms which could properly be used for railway billing purposes in the transportation of casinghead gasoline, either alone or blended with some other petroleum product, (1) "liquefied petroleum gas," when the vapor pressure exceeded 10 pounds per square inch, and, (2) "gasoline," when the vapor pressure was 10 pounds or lower. This is also true under the regulations of September 1, 1918, except that under those regulations the product could be shipped as "casinghead gasoline" or "casinghead naphtha" besides as "gasoline" when the vapor pressure was 10 pounds or lower. There was no authority whatever to ship it as unrefined naphtha; and the shipping of it under that designation alone, or in addition to some authorized designation, was a violation of the regulations and itself a misdemeanor under section 235 of the Penal Code.

It may be suggested that the regulations of the commission are safety regulations and do not have bearing upon the rates. But these regulations do have a bearing on the rates, for the reason that the regulations were published in the Western Classification and thereby made a part of the tariff rules governing the transportation. The regulations effective October 1, 1914, as amended to September 1, 1916, including the amendments effective May 15, 1916, were published in Western Classification No. 54, I. C. C. No. 12, effective September 1, 1916 (Rec. 1062), as rule

44 thereof (Rec. 1065). Western Classification No. 55, I. C. C. No. 13, effective April 1, 1918 (Rec. 1121), superseded the previous issue and brought forward the regulations as rule 44 (Rec. 1123).

The amended regulations of September 1, 1918, were published in Supplement No. 5 to Western Classification No. 55, I. C. C. No. 13, which supplement became effective August 29, 1918. (Rec. 1140-1142.)

+ The tariffs naming the rates applicable to the shipments in question were governed by Western Classifications Nos. 54 and 55. See, for example, Supplement No. 52 to I. C. C. tariff No. 1048, effective November 16, 1916, naming the 33-cent rate on gasoline in effect at the time the shipments in question began to move, December 2, 1916, which bears the notation "Governed \* \* \* by Western Classification No. 54." All of the tariffs involved carried similar notations. Thus rule 44 of the classifications, embodying the commission's safety regulations, were made part and parcel of the tariffs, deviation from which is unlawful under the act to regulate commerce and the Elkins Act.

Since the safety regulations are part of the lawfully applicable tariffs, which constitute the legal standard, and since the regulations prohibit the transportation of the commodity in question as unrefined naphtha, it follows that the tariffs themselves negated the application of the unrefined naphtha rates on the shipments in question. Had the shipments been billed under any of the designations authorized by

the regulations, and hence by the tariffs, the gasoline rate or a rate not lower than the gasoline rate would have been applied.

In view of what has heretofore been said, but brief consideration need be given to the remaining assignments.

## II

### Assignment of errors relating to admission of evidence

#### 1. The court held that:

Throughout the trial, during introduction of evidence, and in argument the prosecution insisted that the conduct of the defendant was fraudulent. One of the grounds of this insistent (insistence) was the fact that the defendant's traffic agent asked for the rate on unrefined naphtha, a commodity which had theretofore been and was then being shipped as gasoline to Port Arthur; but in the light of the ruling of the Interstate Commerce Commission in the National Refining Company case, the rate on unrefined naphtha theretofore given by one of the carriers to Baton Rouge on a commodity shown to be substantially the same as the condensate of the Gypsy Company's plants, and the testimony in this case, we think the insistence groundless and must have been highly prejudicial. (Vol. II, p. 1690.)

There is nothing in the record indicating that Government counsel made any vicious or persistent charges of fraud against defendant. There was at

times suggestions of deception, but certainly nothing more than was amply justified by the facts proven.

As heretofore shown, the Court of Appeals was entirely mistaken as to the nature of the order made by the Interstate Commerce Commission in the National Refining Company case. The commodity there under consideration was not even of as high a grade as "crude naphtha," by which is meant the "naphtha fraction" before it is distilled and separated into gasoline, benzine, and painter's naphtha. The evidence well warranted the conclusion that the defendant was guilty of deception in securing the adoption of a rate on "unrefined naphtha," and then shipping under that rate casing-head gasoline and a blend of casing-head gasoline and painter's naphtha. But if the proof did not warrant a finding of actual fraud, yet there is no precedent to support the holding that it is reversible error for counsel to make a contention which the court subsequently finds is not maintainable. If that be a correct principle, then counsel dare not take any position in the trial of a lawsuit which he is not absolutely certain will be maintained.

2. The Court of Appeals further held that it was error to admit testimony that this same commodity was shipped to Pittsburgh by the Gypsy Company as "gasoline" while it was being shipped to Port Arthur as "unrefined naphtha," because no rate on unrefined naphtha was in effect between Kiefer, Drumright, and Jenks and Pittsburgh.

Manifestly any evidence was competent which reasonably tended to prove under what name the commodity in question was generally known and handled. And the fact that it was shipped upon any lines of road between any points under the designation "gasoline" tends to prove that it was known as "gasoline." And evidence that defendant itself was so shipping it was specially pertinent to show that it knew and recognized that gasoline was a name in use for the article. There were two important elements of proof: one, to show to what extent the commodity was known as gasoline, and the other, how commonly it was known, if at all, as unrefined naphtha. The evidence which the Court of Appeals held should have been excluded was certainly material to prove the first element, and the very fact that no rate on unrefined naphtha existed between the three points mentioned and Pittsburgh, though this commodity had for years been shipped from them to Pittsburgh, tended to prove that it was not known in the trade as "unrefined naphtha."

Suppose a rate had been put in on beeswax between Kiefer and West Port Arthur, and thereupon defendant began to ship this commodity under that name; must the court take that designation as conclusive and exclude evidence as to the name under which it was shipped from Kiefer to Pittsburgh because no rate on beeswax existed between those points?

3. The court also held that it was error to admit evidence showing that the products at other casing

head compression plants in Oklahoma were called "gasoline" and shipped as such "without a showing that they were substantially similar to those of the Gypsy Company, and in the face of proof that they were not of a uniform blend with the Gypsy Company but contained, *in some instances*, as much as 75 per cent naphtha."

In fact the evidence did show that the products of those plants were substantially the same in character as the product in question shipped by the Gypsy Company. It may be that in some instances the blend shipped by other companies contained a higher percentage of painter's naphtha than the blend shipped by the Gypsy Company, and in other instances the blend was lower. *But the evidence shows beyond question that this entire class of products, to wit, casing head gasoline, and all proportions of blends of casing head gasoline and painter's naphtha, is known by those that produce them and in the trade as "gasoline," and are continually shipped as such.* That fact is certainly very material in determining whether or not the commodity in question was gasoline and should have been shipped under the gasoline rate; and any evidence that tended to show such fact was admissible.

### III

#### **Assignment of Errors Relating to Statements made in Argument by Defendant's Counsel**

1. The following occurred during argument of one of the Government's counsel:

COUNSEL. Mr. Tabor, the vice president of the company, quoted a list of works of about

150, perhaps, all told on the subject of naphtha, but when it came to the subject of how many of those deal with unrefined naphtha he was crowded back to the conclusion that there was but one man and that he had been quoted by another, and one of those men was the employee or rather came from the Mellon Institute in Pittsburgh. Now, what is this Mellon Institute? It is an institution that was founded by the Mellon family of Pittsburgh. Mr. W. L. Mellon is president of the Gulf Oil Corporation.

Mr. DIGGS. If the court please we except to that, as no evidence (is) in the record showing Mr. Mellon's connection with this company. W. L. Mellon as president, the evidence being that the sworn evidence of George S. Davis was president.

The COURT. Yes.

Mr. GANN. He was president of the Gulf Oil Corporation.

Mr. DIGGS. No evidence connecting him with this case at all.

The COURT. Yes there is not any evidence here and the jury will not consider it. (Vol. 1, pp. 905-6.)

In fact the statement here made by counsel was wholly immaterial, and there is nothing in the record to indicate that it could have had any unfavorable effect whatever. It was directed toward the testimony of Mr. Tabor, who seems to have cited as an authority an employee of the Mellon Institute in Pittsburgh. Counsel asserted that this institute



was founded by the Mellon family, being at the time under the impression that the evidence showed that Mr. Mellon was president of the Gulf Oil Corporation, but the court at the time told counsel that there was nothing in the record to show such fact, and the matter there ended. In the first place, the testimony of Mr. Tabor, in so far as it was based upon opinions of the nature mentioned, was within itself of practically no value; and the suggestion of a connection of a gentleman upon whose writings the witness based his opinion with the Mellon Institute, and that the Mellon Institute was in some remote way connected with some one who had an interest in the defendant, Gulf Refining Company, was entirely too remote to have had the least effect upon the mind of the jury. Undoubtedly counsel should have confined himself strictly to the record; but if it be adopted as a rule that judgments must be reversed because of such incidental remarks, but few judgments will be sustained by appellate courts.

2. The Court of Appeals also held that the following remarks made in argument by counsel for the Government were prejudicial:

Gentlemen of the jury, there is this in this case, if the commodity which they shipped and transported under the instructions which will be given to you by the Court in your judgment, after hearing all of the evidence, is gasoline, then by reason of there being another name for it, they violated the laws, they placed the other shippers in a position where they were not able to compete with them; they

placed in their own pockets hundreds of thousands of dollars of which they were not entitled to and which the people of the United States have got to bear the burdens and it is true that the Gulf Refining Company will have to join, thank goodness, the other people of the United States to pay these things if it had to be paid. (Vol. 1, p. 907.)

No exception was made to these remarks by counsel for the defendant. As a matter of fact what was said by counsel is literally true as would probably have occurred to the mind of any juror, but it was such an insignificant fact that no attention would be given to it whether mentioned or not.

However, the court was careful to exclude from the minds of the jury all references by counsel upon both sides to matters outside the record. When court convened on the morning after these remarks were made, as argument was about to be resumed by counsel for the Government, the court remarked:

Wait a minute. Now, gentlemen of the jury the defendant makes the following exception; the defendant excepts to the comment of the Government's counsel, Gann and Chambers, suggesting that the United States Government pecuniary affected by the manner of the consideration, the defendant not being on trial on charge of defrauding the United States, and also except to the comment of the Government counsel Chambers upon the wealth of the defendant; such comment to the jury being highly improper and calculated and inflame and defendant moves the court to

instruct the jury to especially disregard such remarks. And defendant also excepts to the statement of Mr. Chambers to the jury charging the defendant had violated the safe transportation rules, such charge being contrary to the fact and admission of the Government, and calculated to inflame; and defendant moves the court to especially instruct the jury regarding it. Now, yesterday both sides on these points, to my mind, went outside of the proper domain, as there was no objection, I permitted them to do that. One side charged in the argument that the railroad a part of the time when the railroad under the war, under the Federal control. Then the statement was made about what the result would be affecting members of the jury. Everything else, that has got nothing to do with the case. Then the other side said how it affected their clients, how they could be made to refund in civil damages. So I admonish you to try the case according to the evidence. Hear the arguments of the attorneys, and when they are sound, if they are sound, that is for you to determine about that. If they do not confine themselves to the evidence in the case, that is for you to determine about that. The case is to be tried without fear or favor. Without any regard as to how it affects people, but solely with a view to the weight of evidence as to be determined by the jury and as to the law to be given you. The exception was made on the reconvening of court and after the argument had been made the previous day, but before the argu-

ments were finally concluded. (Vol. 1, pp. 908-9.)

And just before the Trial Judge delivered his charge to the jury he again admonished them as follows:

Gentlemen of the jury, before I begin the charge I will read to you what I said this morning. Now, on yesterday both sides on these points, to my mind, traveled outside of the domain of proper argument. I permitted them to do this, no objection being made by either side at the time. One side suggested in the argument that the railroads a part of the time were under Federal control, being in the hands of the Director General; in another statement that was made, that the result of the verdict might affect the interests of the taxpayers, including the interests of the jurors, or in substance that. Then on the part of the defendant it was adverted to the fact that the defendant could be made to refund in a civil suit. The jury are admonished that the case is to be tried according to the evidence and the admissions in the case. The jury are to hear the arguments of the attorneys, and when they consider the argument sound as relating to prove facts from the evidence admitted in the case and the admissions in open court before the jury, that is for them to determine. If the attorneys do not confine themselves to the evidence and admitted facts in the case, the jury should disregard such argument. The case is to be tried without fear or favor and without prejudice and without any regard to the pecuniary effect upon any-

one, but solely with a view of justice. As regards the safety appliances, it is my understanding there is no contention of any violation of the same by the defendant in observing regulations prescribed as precautions to safety. That is for the purpose of reading that in the record and is an admonition to the jury. (Vol. 1, p. 911.)

These instructions by the court certainly obviated any unfavorable influence that argument of counsel otherwise might have had upon the minds of the jury.

For the foregoing reasons the judgment of the Circuit Court of Appeals should be reversed and the judgment of the District Court affirmed.

JAMES M. BECK,  
*Solicitor General.*

J. A. FOWLER,  
*Special Assistant to the Attorney General.*



# In the Supreme Court of the United States

OCTOBER TERM, 1924

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THE UNITED STATES OF AMERICA,

PETITIONER

v.

GULF REFINING COMPANY

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No. 40

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

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**GOVERNMENT'S BRIEF IN REPLY TO "BRIEF FOR  
DEFENDANT"**

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Presumably on the assumption that if this court should conclude there is reversible error in the holdings of the Circuit Court of Appeals, it will then consider questions raised in, but not passed upon by, that court, defendant has included in its brief a discussion of all questions there presented. That the court may have before it the Government's contentions as to all questions involved in the case, there is here reprinted with slight modification, and filed as a reply brief, those parts of the Government's brief used in the Court of Appeals as a reply to the questions of law there raised by defendant.

## PLEA IN ABATEMENT

(Defendant's brief 70-79)

A plea in abatement was filed by plaintiff in error, in which the indictment was attacked—

because the said pretended indictment was not read or by said Grand Jury, and said Grand Jury did not at any time know the contents thereof, and consequently the said Grand Jury did not vote upon the same.

To this plea the United States demurred, and the court, holding that the demurrer was to be treated as an exception to the sufficiency of the plea and as a motion to strike, after argument by counsel, struck the plea from the record.

The averments, except the concluding clause—“consequently, the said Grand Jury did not vote upon the same”—are identical with those in *United States v. Terry*, 39 Fed. 355. The clause referred to is manifestly not an averment in the true sense, is merely an argumentative inference from the preceding averments, and is negligible.

In the *Terry* decision the court ruled that a plea in abatement does not lie, but that the course which should be followed is by way of a motion to quash the indictment.

The plea in abatement, therefore, was rightly stricken.

Defendant also interposed a motion to quash, the averments in the motion being the same as in the



plea except that there was omission of the final argumentative clause.

After argument the court, in its discretion, struck the motion to quash from the record.

This exercise of the court's discretion is amply supported by the *Terry* decision above cited, which contains a full and learned discussion of the law as applied to facts substantially identical with those in the case at bar. It is also fully supported by the following cases:

*United States v. Rosenburgh*, 7 Wall. 580.

*United States v. Avery*, 13 Wall. 251.

*United States v. Hamilton*, 109 U. S. 63.

*McGregor v. United States*, 134 Fed. 187.

#### THE POINTS RAISED BY DEMURRER

(Defendant's brief 79-112)

#### FACTS ARE AVERRED IN THE INDICTMENT WITH REQUISITE LEGAL CERTAINTY

The accused is entitled to be apprised of the precise charge brought to enable him to make defense and to avail afterwards of the plea of autrefois convict. The court must be informed of the facts so that it may decide whether they will support a conviction. Hence the rule requiring statement, with reasonable particularity of time and place and circumstance, of *facts* and not mere conclusions of law. Legislative definition of statutory crime may require or permit use of generic terms, but in framing indictments in such cases it may not always

suffice to copy statutory language. In order to satisfy the rule just stated the count must at times descend into particulars. *Armour Packing Co. v. United States*, 209 U. S. 56, 83-4.<sup>1</sup>

However, there can be no objection to use of statutory terms provided, in connection with other averments, they are sufficiently descriptive of the offense. In other words, it is sufficient to charge acts falling within the statutory prohibition in the substantial words of the statute provided requisites of good pleading are met. Cf. *United States v. Simmons*, 96 U. S. 360.

The gist of the crime denounced by the Elkins Act is "receipt of a concession." In this indictment guilt is imputed and charged by use of this language accompanied with precise averments of date, place, and kind of shipment, names of carriers, destination, route, its interstate character, the published legal rate, the rate for which the shipment was actually carried, and the receipt of a "concession," *with the amount thereof stated in exact figures*, whereby transportation was averred to have been had at rates less than those published.

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<sup>1</sup> Under a statute penalizing "devising of any scheme or artifice to defraud" the bare charge that defendant "devised a scheme to defraud" was held insufficient. Particulars must be alleged from which it may be seen that the scheme was a fraudulent one within the intendment of the statute. *United States v. Hess*, 124 U. S. 483, 486-9.

A charge in statutory words of an intent to hinder, etc., enjoyment "of all the rights, privileges, and immunities \* \* \* of citizens because persons of African descent was held bad because it failed to specify the rights intended to be interfered with. *United States v. Cruikshank*, 92 U. S. 542, 557-9.

Substantially similar indictments were sustained in *Chicago, St. P., M. & O. Ry. Co. v. United States*, 162 Fed. 835, 838, and in *Armour Packing Co. v. United States*, 153 Fed. 1, 16, 17, affirmed 209 U. S. 56.

Defendant, however, insists that this indictment is demurrable because it charges generically in the statutory language "receipt of a concession," but fails to specify whether the concession "consisted of free demurrage, collection at less than the lawful rate with or without a device, a rebate with or without device, extension of credit, etc." Further, that it fails to specify whether defendant by agreement with a carrier in the first instance paid less than the lawful rate, or whether it paid the full rate, subsequently accepting return of a portion, or whether it received something else of value in connection with the transportation instead of money.

An inspection of the counts shows the want of merit in this connection. Count 1 charges (R. 4) receipt of a concession of  $13\frac{1}{2}$  cents per hundred pounds off the rate named in published schedules in force, "*which said concession so accepted and received by the said Gulf Refining Company from the said common carriers amounted in the aggregate to \$72.55.*" \* \* \* Other counts are similar.

This is a charge that defendant got its merchandise transported for \$72.55 less money than should have been paid. And it excludes the notion that the concession consisted of anything but money or that a rebate was given.

It has been definitely decided (*Armour Packing Co. v. United States, supra*) that the use of a device is not an element of the offense and need not be averred. Moreover, the court there denied a contention that the indictment was insufficient because it omitted to set out *of what the concession consisted or how it was granted* (p. 83). When as here the indictment apprises defendant of the particular shipment complained of, of its route from starting point to destination, of the published rate as contrasted with that actually paid for the transportation, an allegation in the language of the statute of receipt of a concession without specification of the methods by which it was obtained is clear and certain to common understanding.

It is not seriously contended here that defendant was actually misled or that lack of knowledge of the real accusation hampered its defense. It was not led to believe that it was charged with accepting a technical rebate or free demurrage or with receiving some benefit other than money. The trial demonstrated that it was at all times fully aware of the conduct on which guilt was imputed.

Section 1025, R. S., reads in part:

No indictment \* \* \* shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, *which shall not tend to the prejudice of the defendant.*

This provision was applied to a similar indictment by the Supreme Court in *Armour Packing Co. v. United States*, *supra* (p. 84), and it was said:

There can be no doubt that the accused was fully advised of and understood the precise facts which were alleged to be a violation of the statute.

As we interpret this law, it is intended, among other things, to prohibit and punish the receiving of a concession for the transportation of goods from the duly filed and published rate. Each and all of the elements of the offense, with allegations of time, place, kind of goods, and name of carrier, are distinctly charged in the indictment, and include the fixing of the published rate at 23 cents per 100 pounds; the changing of the rate and the new publication at 35 cents per 100 pounds; the knowledge of this change on the part of the shipper, and the carriage of the goods over a described route at a concession of the difference between the published and the contract rate—all these facts being stated, the indictment is clearly sufficient.

Cf. *Ex parte Pierce*, 155 Fed. 663, 665.

In *Chicago, St. P. M. & O. Ry. Co. v. United States*, 162 Fed. 835, 836 (212 U. S. 579), the offense was collection of full rates and the subsequent return to the shipper of an elevator charge not published in the filed tariff. In the indictment this transaction was represented by an allegation (p. 836) that the defendant paid certain

rebates and certain concessions whereby the property was transported at less compensation and rate than that named in the schedules; "that is to say, a rebate, refund, and concession of one-half cent per bushel." It was not specifically averred that the rebate represented the elevator charge. The accusation followed the statutory language charging simply that the railroad granted a "rebate" or "concession" whereby the property was transported at the less rate. It was held that this was sufficiently precise and definite.

In *Standard Oil Co. v. United States*, 179 Fed. 614, 617-9, an indictment similar to this stating details of the shipment, contrasting the rate lawfully chargeable with that paid and charging that defendant thereby knowingly accepted and received a concession was attacked because of failure to allege payment of the unlawful rate. It was held that the indictment, by following substantially the language of the statute, charged the gist of the offense—the receipt of the concession—with sufficient certainty and particularity. It will be observed that the averment in the statutory language of the acceptance of a concession was held equivalent in common understanding to an averment of its payment, a fact thought essential to guilt and not otherwise specifically pleaded.

These cases are alike in principle with *United States v. Scott*, 74 Fed. 213, 217, which points out that colloquial expressions, utilized in the description of statutory crimes, are also sufficient for use

in the indictment if sufficiently informative. Such expressions may well be regarded not as averments of conclusions of law but as adequate descriptions of *concrete fact*.

THE INDICTMENT NEED NOT AVER COMPLICITY ON THE  
PART OF THE COMMON CARRIER

Prior to December 2, 1916, all freight of this description was indiscriminately rated as gasoline. Thereafter in the applicable schedules filed the commodity was divided into two classes, "gasoline" and "unrefined naphtha," the published rate on the latter being substantially less. Defendant was convicted on proof showing that on carloads consigned to it as "unrefined naphtha" it paid at destination the prescribed rate for that commodity; whereas the product actually shipped was not unrefined naphtha but gasoline, for which it should have paid the higher rate. Consequently, defendant "knowingly" received a concession of this difference. The carrier, of course, *granted* the lower rate, but it was not averred or proven that it was aware that the shipment was gasoline and not "unrefined naphtha," and, therefore, that it purposely or "knowingly" granted a concession. Is such complicity an essential element of the offense and must it be averred in the indictment?

The history of legislation dealing with discrimination in rates and its judicial construction demonstrate that this contention is based on a narrow and inadmissible interpretation of the Elkins Act.



The purpose of Congress was to cut out by the roots every form of discrimination, favoritism, and inequality.

*Louisville & Nashville R. R. v. Mottley*,  
219 U. S. 467, 478.

It is the object of the interstate commerce law and the Elkins Act to prevent favoritism by any means or device whatsoever and to prohibit practices which run counter to the purpose of the act to place all shippers upon equal terms.

*United States v. Union Stock Yard*, 226  
U. S. 286, 309.

The Act of March 2, 1889, c. 382, 25 Stat. 857, as amended by § 10 of the Act of June 18, 1910, c. 309, 36 Stat. 539, U. S. Comp. Stat., § 8574 (3), forbids false and fraudulent billing, classification, or other representation whereby, with or without the carrier's connivance, transportation is sought at less than legalized rates. The gist of these offenses is *willful fraud*. But it became increasingly manifest to Congress that by methods falling short of willful fraud shippers could get concessions—often at the carrier's expense and without its concurrence—and that it is often difficult to persuade a jury of the existence of actual bad faith. The constant purpose in the series of acts to regulate interstate commerce being to bring about exact equality, the observance in similar circumstances of the one prescribed rate

by the shipper as well as the carrier, the applicable provision of the Elkins Act has been aptly described as a "catch-all" provision for any practice by either carrier or shipper, which by any device whatever would tend to defeat the purpose of the law.

*United States v. Vacuum Oil Co.*, 153 Fed. 598, 604.

In *Armour Packing Co. v. United States*, *supra*, it is broadly held that if by any method (whether it may or may not be described as a "device" or whether it can or can not be stigmatized as "fraudulent") the shipper obtains transportation at less than published rates, he offends against this section (209 U. S. 72):

The Elkins Act proceeded upon broad lines and was evidently intended to effectuate the purpose of Congress to require that all shippers should be treated alike, and that the only rate charged to any shipper for the same service under the same conditions should be the one established, published, and posted as required by law. It is not so much the particular form by which or the motive for which this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions and rebates from the fixed rates, duly posted and published.

In *United States v. Metropolitan Lumber Co.*, 254 Fed. 335, 342, defendant procured transportation in violation of an embargo laid on all private

shipments of lumber. The carrier could not and did not know, acquiesce, and connive. The district judge, upon unanswerable considerations, held that such complicity was not an essential of the offense and that the Elkins Act was passed to cover the loopholes which previous acts had left open for discrimination and the exercise of favoritism.

Defendant contends that there is still a loophole left and that Congress has not penalized acceptance of a concession except where the carrier consciously participates. Having regard to the complexity of railroad freight business and to the wide opportunity afforded (as demonstrated by this record) to obtain concessions of which the carrier is or seems to be ignorant, and considering also the difficulty of proving the carrier's actual knowledge, it is believed that this court will not hesitate to deny this ground of demurrer.<sup>1</sup>

#### WAS DEFENDANT A SHIPPER

Stripped of detail, the counts set forth specific interstate consignments of gasoline from the Gypsy Oil Co. to defendant; delivery to initial carrier; transportation by it and connecting carriers pursuant to instructions given by consignor *and by defendant*; delivery by carrier to defendant in Texas; freight charges (set forth in dollars and cents), *thereupon becoming due by defendant and*

<sup>1</sup> In *United States v. Vacuum Oil Co.*, 153 Fed. 598, 604, the court observes that the word "concession" does not necessarily signify or imply that the shipper *solicited* a concession which the carrier could give.

payable to the carrier; receipt by defendant of a concession off the legal rate of a definite sum.

Defendant urges that these allegations fail to show—

(a) that it was indebted for the transportation;

(b) that it was a “shipper” within the meaning of the Elkins Act.

(a) There can be no serious denial that a shipper may incur indebtedness for freight charges who joins in instructions under which the carrier receives, transports, and delivers cargo to such shipper as its consignee. Business is done on these terms by a sort of universal practice or consent. It would entail intolerable prolixity and delay if the government were forced to load indictments with minute details of every circumstance attending a shipment tending to show assumption of freight charges by the consignee. The indictment here states the facts from which the liability arose and charges sufficiently and directly that the consignee *became indebted*, etc. Contents of bills of lading and other documents attending the transaction were properly left for the proof. Defendant was apprised by the indictment of every fact upon which its indebtedness for the proper freight charges arose.

(b) The Act of June 29, 1906, c. 3591, § 2, 34 Stat. 587, amending the text of the Act of February 19, 1903 c. 708, § 1, 32 Stat. 847, did not evince intention to relieve consignees from the penalty im-

posed upon consignors, thus deviating from the steadfast congressional purpose to extirpate all manner of favoritism and discrimination in interstate commerce.

By the Act of 1903 it was made unlawful for *any person or corporation* to give or take any rebate, concession, etc., and every such person or corporation was declared guilty of a misdemeanor. One purpose among others of the amendments introduced by the Act of 1906 was to settle the doubt theretofore entertained whether conviction could be had without proving that the act was knowingly or willfully done. *Great Northern Ry. Co. v. United States*, 155 Fed. 945, 955 *et seq.* The text was altered to read "every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant or give, or solicit, accept, or receive any such rebates, concession, or discrimination, shall be deemed guilty of a misdemeanor \* \* \*."

The word "knowingly" was inserted and furthermore after the words "every person or corporation" the words "whether carrier or shipper" were inserted in order to make it perfectly clear that illegal purpose must be fastened on carrier as well as shipper. There is no valid evidence of intent to restrict otherwise the generality of the Elkins Act. There is no sound reason for the assumption that the word "shipper" was given a technical significance but every reason to conclude that it was intended to include consignees, since it

must have been known to Congress that a large proportion of freight traffic is actively directed by and a large proportion of freight charges paid by consignees and that the latter are as vitally interested as are consignors in procuring concessions or other favors from the carrier.

These questions were in debate in *United States v. Metropolitan Lumber Co.*, *supra*, and the logical conclusion was reached by the district judge that, since goods are in reality transported by the consignee when he pays the freight and since he is the only person in such cases benefited or interested in concessions or rebates, for obvious reasons, unless the very purpose of the act is to be nullified, such a consignee is a shipper within the meaning of the act as he is in fact. *Ib.* 346.

The words "every person or corporation, whether carrier or shipper" are too wide to permit the inference that an active consignee paying the freight is not included. *Cf. United States v. Standard Oil Co.*, 148 Fed. 719, 722.

COUNTS 36 TO 40 AND 81 TO 85 ARE NOT DOUBLE

The statute penalizes acceptance of (1) rebates, (2) concessions, or (3) discriminations. These words differ in meaning, and the practices denoted by them are susceptible of classification. The shipper may illegally get back a part of what has been paid—rebate; pay in the first instance less than the legal rate—a concession; get a preference represented by something besides money—which

may be fairly described either by the word "concession" or by the word "discrimination."<sup>1</sup>

But it seems reasonably beyond cavil that every "rebate" and every "concession," except it be accorded to all shippers alike, is also a "discrimination."

The counts here in question are like the others except for an averment that an outside company shipped gasoline during the same period by the same route, paying full legal rates. They charge receipt of concessions by defendant whereby transportation was had at less than legalized rates and *whereby a discrimination was practiced in favor of defendant and against the outside company.*

Under the statute it is unlawful to "receive any rebate, concession, or discrimination" whereby property shall be transported at less than legalized rates "or whereby any other advantage is given or discrimination is practiced," and receipt of any such rebate, concession, or discrimination is made a misdemeanor.

The counts specified what the discriminations charged were, viz, transportation at less than legalized rates. No discrimination other than this was averred. There was but a single charge included in each of these counts, namely, receipt of a concession which was at the same time a discrimination; or, conversely, receipt of a discrimina-

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<sup>1</sup> Cf. *United States v. Metropolitan Lumber Co.*, 254 Fed. 335; *Dye v. United States*, 262 Fed. 6; *Hocking Valley Ry. Co. v. United States*, 210 Fed. 735.



tion by means of a concession from the published rates. There was no effort to charge two offenses growing out of one and the same shipment. Defendant was accused of and is to be punished for but one offense—a single act which, however, under the statute was illegal because proved to be both a concession and a discrimination. Authorities abundantly sustain the validity of the counts.

It is a commonplace of criminal practice that when a statute forbids the doing of several things not repugnant to each other, defendant may by a single act violate all the prohibitions or some one or more of them. In either case he may properly be charged in a single count with violation of all the forbidden things and convicted for one offense if the proof shows that he violated any one or all of them. Bishop's New Criminal Procedure (2d ed), § 436.

In *Crain v. United States*, 162 U. S. 625, 636, it is said:

The statute was directed against certain defined modes for accomplishing a general object, and declared that the doing of either one of several specified things, each having reference to that object, should be punished.

\* \* \* We perceive no sound reason why the doing of the prohibited thing, in each and all of the prohibited modes, may not be charged in one count, so that there may be a verdict of guilty upon proof that the accused had done any one of the things constituting a substantive crime under the statute.

The statute under consideration is violated by the mere offer or by the actual grant of a rebate. Giving a rebate includes both grant and offer. If but stages of the same transaction and committed by one person, the entire act may be properly included in one count as a single offense.

*United States v. Delaware, L. & W. R. Co.*, 152 Fed. 269, 273.

*United States v. Great Northern R. Co.*, 157 Fed. 288, 290.

Cf. *United States v. Fero*, 18 Fed. 901.

*United States v. Heinze*, 161 Fed. 425, 427.

*Lehman v. United States*, 127 Fed. 41, 45.

DURING FEDERAL CONTROL THE PROVISIONS OF THE  
ELKINS ACT RELATING TO OFFENSES BY SHIPPERS  
WERE IN FORCE

The act forbids rebates, concessions, etc., *in respect of interstate transportation by any common carrier subject to the act to regulate commerce*. It is argued that during federal control it became inoperative because the government was not a *common carrier subject to the act to regulate commerce*.

If this reasoning be sound, it would follow that every offense against person or property denounced by federal or state law was likewise immune from punishment provided the applicable statute, in defining the offense, employed words similarly linking the forbidden act with the property or the instrumentalities of the *common carriers* taken over by the government. The mind

recoils from this consequence, and it is, of course, obvious that it was not so intended either by the Executive or by the Congress.

Temporary control of the railroads was taken for war purposes. As is well known, they continued as before to serve the public as common carriers *in fact*; the government simply stepped into the place of the corporate owners, continuing through the old organization to furnish transportation to all alike and *to act as common carrier in fact if not in law*. All freight and passenger traffic offered was transported as usual except as delayed by war needs.

It is only because of certain peculiar rights and obligations attaching to the status that the "common carrier" is distinguished from other business agents. If these rules of law are applied (and there is no natural reason why they should not be) to transportation facilities operated by the government, then the government becomes in law, as it is in fact, a common carrier. Moreover, there is in the nature of things no reason why government should not furnish transportation to private shippers (so far as compatible with paramount duties imposed on the sovereign by the war) without discrimination in accordance with existing acts regulating commerce; nor why the penal sections of these laws should not continue their wholesome restraint upon self-seeking shippers and railroad officials.<sup>1</sup>

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<sup>1</sup> Subjection of a government-owned ship to the legal incidents attending operation of an ordinary private merchant vessel is illustrated by *The Lake Monroe*, 250 U. S. 246, 254, et seq.

It is believed that this result was intended and established as law, as shown by the following citations:

Act of August 29, 1916, c. 418, 39 Stat. 619, 645; U. S. Comp. Stat., § 1974(a), authorizing control of transportation.

The President's proclamation of December 26, 1917, 40 Stat. 1733.

Secs. 1, 8, 9, 10, and 15 of the Act of March 21, 1918, c. 25, 40 Stat. 451; U. S. Comp. Stat. 1919, Supp., §§ 3115½ a, h, i, j, o.

To escape the plain significance of these provisions defendant urges:

(a) That the common carrier status may not logically be attributed to transportation systems under federal control because the government was not bound to serve all alike, but had power to lay embargoes or otherwise discriminate in favor of military traffic.

It suffices to reply that in time of war it was already the statutory duty of common carriers to accord preference and precedence to military traffic.

*Interstate Commerce Law*, § 6, as amended by the Act of August 29, 1916, c. 417, 39 Stat. 604; U. S. Comp. Stat., § 8569(8).

No one would contend that in the absence of federal control, or before it began, obedience to this statute took from the railroads their status as common carriers in respect of private traffic and thus suspended all laws controlling it. Nor were the provisions of § 10 of the Federal Control Act

imposing common carrier responsibility on "carriers while under federal control" nullified because of the powers granted to meet the military emergency.

(b) Something is made also of that part of the Elkins Act which imputes to the incorporated common carrier certain guilty conduct of its agents and of the absurdity of imputing guilt to the government when it stepped into the carrier's place.

Paradox like this is always attractive to juvenile curiosity and when aided by the wit and ingenuity of the scholiast can be carried far. But in serious business it has little place. Counsel find no difficulty in admitting that, since the government may not punish itself, this part of the law was suspended during federal control.

But is there anything in the cited texts or elsewhere from which to deduce the intention to obliterate the penalties imposed by the act on individuals and private shippers? Is it not on the contrary clear that both executive action and applicable federal legislation in respect of federal control not only did not suspend but kept in force the common carrier status and the regulatory acts of Congress as regards ordinary traffic?

By the act of 1916 military possession and control was authorized to the exclusion of other traffic *but only as far as might be necessary*. The President by virtue of this authority undertook on behalf of the government the duty of performing (as far as possible) the usual and ordinary business

and duties of common carriers, explicitly announcing, moreover, his intention to operate and control these systems of transportation subject to existing statutes and orders of the Interstate Commerce Commission, etc., except as otherwise determined and declared by specific orders. This declaration and act of the President was recognized and given the force of law by the Federal Control Act of 1918, reciting the President's action; providing methods for compensating the carriers; authorizing the President to execute any of the powers therein or theretofore granted him with relation to federal control through such agencies as he might determine (§ 8); continuing the provisions of the Act of August 29, 1916, *supra*, and conferring on the President the further and other powers necessary and appropriate to give effect to the powers then and theretofore conferred (§ 9). Finally (§ 10) carriers while under federal control were made subject to all laws and liabilities *as common carriers*, whether arising under state or federal laws or at common law, except so far as inconsistent with legislation or orders of the President. Keeping in mind that the word "carriers" here employed means "railroads and systems of transportation," and that the words "federal control" mean the action of the President taking over possession, use, control, and operation (see § 1), how can it be said that these railroads while operated under this connected and linked series of statutes and executive orders were not by force of the actual text of the

Federal Control Act common carriers of persons and property subject (in accord with the President's declaration as ratified by that act) to applicable existing statutes and orders of the Interstate Commerce Commission?

In *Missouri Pac. R. Co. v. Ault*, decided June 21, 1921, 41 Sup. Ct. 593, it was held that since federal control displaced corporate management the carrier corporation could not be held liable for a penalty imposed by Arkansas law. Moreover, that § 10 of the Federal Control Act should not be construed as imposing liability on the government for a penalty. The points actually decided are not important here, but in the course of the opinion several points relevant here are cleared up. It is pointed out that the authority exercised by the President was confirmed by the Federal Control Act; that the phrase "carriers while under Federal control" must be interpreted as provided by § 1 and as pointed out in this brief; that by § 10 and § 15 the United States submitted itself to the various laws, state and federal, which prescribe how the duty of a *common carrier* by railroad should be performed and what should be the remedy for failure to perform; that the plain purpose of § 10 was to preserve to the general public the rights and remedies against common carriers which it enjoyed at the time the railroads were taken over by the President except in so far as such rights or remedies might interfere with the needs of federal operation.



The trend of these remarks and their bearing on the case at bar are manifest.

In *United States v. Metropolitan Lumber Co.*, 254 Fed. 335, 349, the present contention was raised and overruled in an able opinion by District Judge Haight.

In a series of cases decided during federal control the Interstate Commerce Commission exercising powers conferred by the acts to regulate commerce administered various important sections of these acts, holding that they remained in full force and effect except in so far as inconsistent with the federal control act and with the orders of the President.

*Johnston v. A. T. & S. F. Ry. Co.*, 51 I. C. C. 356, 361.

*Inland Steel Co. v. Director General*, 57 I. C. C. 339, 342.

*Waste Merchants Assoc. v. Director General*, 57 I. C. C. 686.

*Frost & Co. v. Director General*, 57 I. C. C. 755.

*Indian Refining Co. v. Director General*, 59 I. C. C. 246, 248.

*Dupont De Nemours & Co. v. Director General*, 60 I. C. C. 621.

It may also be observed that Congress recognized the continued application to federal control of the inhibitions of the Interstate Commerce Act relating to unjust, unreasonable, and discriminatory rates and classifications, regulations, etc.

*Transportation Act, February 28, 1920*, 41 Stat. 456, 462, § 206(c).

In further support of this proposition the court will observe that existing law regulating tariffs was specifically *modified* (§ 10) so as to permit the President to *initiate rates, etc., not as usual to be subject to suspension* by the Interstate Commerce Commission, but leaving to that body the power to weigh the reasonableness of such rates and to make findings enforceable as provided in the acts to regulate commerce. Cf. *Director General v. Viscose Co.*, 41 Sup. Ct. 151.

What did this limited though important modification of existing law as to railroad rates signify? Is it not a legislative declaration that (except as specifically modified) this system of law in all other respects remained in force and continued to govern the operation of the government as a carrier of person and property?

Existing law and the common carrier status were not affected by federal control except such features as were inconsistent therewith. It is waste of space to argue at length that the penal statute here considered is entirely consistent with federal control. Prevention of discrimination secured by unfair concessions such as are in issue here was as important during the war period as before and as now.

The offense as defined by the statute and as charged in these counts was receipt of a concession whereby the property was transported at less rate than that named in the published and filed tariffs.

The point is made that the indictment fails to aver that tariffs were filed and published by the government.

Each of the challenged counts (cf. count 36, R. 54) avers that the President assumed control and operated the railroads of the three carriers over whose lines the freight was transported \* \* \* *which control, operation and utilization is herein termed federal control*; that from January 1, 1918, to June 1, 1918, *said three common carriers under federal control* had printed and filed with the Interstate Commerce Commission and had published schedules and tariffs of rates and charges \* \* \* which showed that the lawfully established rate for the transportation of gasoline \* \* \* was thirty-three cents for each hundred pounds. \* \* \*

Considering that the italicised words, *supra*, were authoritatively defined by § 1 of the Federal Control Act as construed in the *Ault case, supra*, it becomes at once manifest that the criticism is not applicable to the averments in this indictment, since they charge directly that the filed and published tariffs on which the concession was obtained were established as such under the applicable law by the direct action of the government operating the three transportation systems under federal control.

**ALLEGED ERRORS OCCURRING ON THE TRIAL**  
**THE DIRECTION OF A VERDICT OF ACQUITTAL**

(Defendant's brief 112-122)

The contention of plaintiff in error that the court should have directed a verdict of acquittal is fully discussed in the Government's original brief.

THE NATURE OF THE CONTROVERSY DOES NOT BRING  
 THE CASE WITHIN TEXAS & PACIFIC RY. CO. V. AMERICAN  
 TIE & TIMBER CO., 234 U. S. 138

(Defendant's brief 122-129)

In that case an administrative question was involved—whether any rate was in existence covering railway ties. Here no such question arose. It is undisputed that the tariffs included the commodity shipped. The question therefore is not whether an article is omitted from the tariffs, but whether it is one or the other of two commodities concededly designated therein.

*Kansas City So. Ry. Co. v. Wolf*, 272 Fed. 681 (8 CCA).

*Butler Motor Co. v. Atchison, etc.*, 272 Fed. 683 (8 CCA).

*National Elevator Co. v. Railway Co.*, 246 Fed. 588 (8 CCA).

*Pennsylvania R. Co. v. International Coal Co.*, 230 U. S. 184.

*Pennsylvania R. Co. v. Puritan Coal Co.*, 237 U. S. 121.

*Illinois Cent. R. Co. v. Mulberry Coal Co.*, 238 U. S. 275.

*Pennsylvania R. Co. v. Sonman Coal Co.*,  
242 U. S. 120.

*St. Louis, I. M. & S. R. Co. v. Hasty & Sons*, 255 U. S. 252.

*Hocking Valley Ry. Co. v. United States*,  
210 Fed. 735.

*Barrett v. Gimbel Bros.*, 226 Fed. 623.

*Dye v. United States*, 262 Fed. 6.

*Reliance Elevator Co. v. C. M. & St. P. Ry. Co.* (Minn.), 165 N. W. 867.

*Merchants' Elevator Co. v. Gt. Northern Ry. Co.* (Minn.), 180 N. W. 105.

THERE WAS NO ERROR IN ADMITTING TESTIMONY THAT PRIOR TO DECEMBER 2, 1916, THE ARTICLE IN QUESTION WAS SHIPPED BY THE GYPSY OIL COMPANY TO PORT ARTHUR AND ELSEWHERE AS GASOLINE, AND THAT SUBSEQUENT TO THAT DATE IT WAS SHIPPED TO THE DEFENDANT AT PENNSYLVANIA AS GASOLINE; NOR IN ADMITTING TESTIMONY THAT OTHER CASING-HEAD PRODUCERS SHIPPED THE SAME ARTICLE AS GASOLINE AND THAT IT WAS EVERYWHERE REGARDED AS SUCH

(Defendant's brief 129-157)

The general principles of relevancy governing such testimony are well established.

*Chicago Great Western Ry. Co. v. McDonough*, 161 Fed. 657 (8 CCA).

*Grand Trunk R. R. Co. v. Richardson*, 91 U. S. 454.

*District of Columbia v. Armes*, 107 U. S. 519.

1 *Wigmore on Evidence*, § 461.

1 *Jones on Evidence*, § 141-a.

The defendant contends that before such proof is admissible there must be a showing that condi-

tions are substantially the same—a proposition we do not dispute. To establish similarity it is contended that the proof must show that the shipper had the choice of two rates, one on unrefined naphtha and the other on gasoline. The argument is that though this article was not gasoline, it nevertheless had to be shipped as such, gasoline being the nearest approach. Singularly enough this overlooks the fact that it is a crime for an interstate carrier to transport an article not embraced in the tariffs.

*Southern Ry. Co. v. Reid*, 222 U. S. 424.

*Texas & Pacific Ry. Co. v. American Tie & Timber Co.*, 234 U. S. 138.

If therefore this article was not gasoline both the Gypsy and this defendant were guilty of inducing the carriers to commit a crime in transporting it without an appropriate tariff. The defendant therefore stultifies itself if it resorts to such an argument.

Proof of the acts and declarations of the employees of the Gypsy Oil Company in shipping and calling this product gasoline is admissible because the evidence indicates that the Gypsy was under the complete domination and control of the defendant's officers, as much so as the defendants in *United States v. Reading Co.*, 253 U. S. 26, and *United States v. Lehigh Valley R. R. Co.*, 254 U. S. 255. In short, the relation of principal and agent existed. Donovan, now dead, was general superintendent in Oklahoma of both the *defendant and the Gypsy* (246).

But the evidence was admissible on a broader ground—on the same ground that the acts of other casing-head producers were admissible. To establish that the article was in fact gasoline, it was proper to prove, as was done, that not only the defendant and the Gypsy but all other casing-head producers regarded it as gasoline and shipped it as such, and that everyone around the plants, as well as the public, called it gasoline.

But defendant further contends that similarity was lacking because the evidence did not establish that the naphtha blend used by other producers corresponded to the Gypsy's proportion. The record makes it clear that a substantial similarity existed. Page references to the testimony are given in our outline of the case, and need not be repeated here. There was testimony showing the proportion of the blend at certain designated plants. And League, who was familiar with practically all the casing-head plants in Oklahoma as well as elsewhere, said that the proportion ran all the way from 25 to 95 per cent (447), although only cars containing a substantial amount of casing head—at least 40 per cent—were shipped (454). The defendant admitted that both before and after December 2, 1916, the article was shipped by producers as gasoline (426-7). See *Hedden v. Richard*, 149 U. S. 346.

Defendant contends that a custom or usage to be binding must be certain, uniform, general, known, not contrary to law, and not contradictory.



But defendant misapprehends the scope of the authorities cited to establish this. They pertain to cases where one party seeks to incorporate into a contract a custom or usage which he claims measures the obligation of his adversary. Manifestly before a custom or usage can be written into a contract the elements just mentioned must be shown. But that is not this case. Evidence was admitted to show that the article was in fact gasoline—that it was so regarded by shippers and the public alike. It was admissible under the same principles of relevancy as the evidence introduced in cases like *Chicago Great Western Ry. Co. v. McDonough*, *supra*, decided by this court.

Burrell, the defendant's leading expert, testified that when blended 30% naphtha and 70% casing head, and in the case of weathering, merely weathered down to the vapor tension rules provided by the I. C. C., it is not gasoline, but it is very popularly called gasoline (693-4).

#### DISCRIMINATION AGAINST THE TEXAS COMPANY

(Defendant's brief 158-161)

The statement that the material shipped by the Totem to the Texas Company was not shown to be of the same degree of blend as the Gypsy product is unwarranted. Its gravity was 71 or 72 (333). The gravity of the Kiefer product ran from 70 to 85 (640, 685, and Exhibits 66, p. 1271; 77, p. 1295; 78, p. 1301; and 80, p. 1308); the Drumright product, 76 or 77 (243, 596); the Jenks product,

77 or 78 (594). The casing-head gasoline produced at the various Oklahoma compression plants is a similar product produced by similar means (209-12, 329, 340, 395-398, 416-9, 421, 427-8, 457-461, 462-3). The evidence is undisputed that the naphtha blend reduces the gravity. The similarity, therefore, of the gravity of the Totem product with that of the Gypsy's shows that the article was substantially the same. Anderson, who did not know the exact proportions, said that the proportion is regulated according to the gravity of the gasoline (329). In addition to all this the defendant admitted that some, if not all, of the shipments contained about  $1/3$  naphtha (382).

Inasmuch as the defendant concedes that the evidence complained of was admissible if the *legal* rate was in fact what the government alleges it to be, further argument is unnecessary.

But the defendant contends that error was committed because the court excluded defendant's exhibit 142 (1463-78), a copy of a complaint filed in Texas by the Texas Company against the Director General to recover back improper freight charges; the first count alleging a discrimination against the Texas Company, and the second that the gasoline rate was improperly assessed. The bills of lading described the article as gasoline (Exhibits 22-5, 972-8), and the evidence was undisputed that the carriers collected from the Texas Company the gasoline rates. If therefore the unrefined naphtha shipped to the Gulf Company was in fact gasoline,

it is manifest that a discrimination against the Texas Company resulted when the Gulf Company paid not the gasoline but the unrefined naphtha rate. The self-serving and hearsay declarations of the Texas Company in its suit against the Director General do not alter the situation, nor tend in any way to prove the absence of discrimination. The evidence was inadmissible for any purpose.

#### OPERATION OF AUTOMOBILES ON CASING-HEAD GASOLINE

(Defendant's brief 162-164)

Defendant contends that "Evidence that certain witnesses had operated automobiles with insufficiently identified materials, admitted as tending to show that proper name of material shipped to defendant was gasoline, was incompetent and prejudicial." One of the defendant's experts had testified that casing-head gas itself will not run a car (695); another, that he had tested at the Mellon Institute the material commonly called casing-head gasoline and that the engine would not run at all (759). Furthermore, the defendant's experts in defining gasoline said that it must be a product that will satisfactorily run a motor engine (691, 743). They also said, on numerous occasions, that casing-head gasoline could not properly be termed gasoline.

The evidence complained of was therefore competent to meet this situation. As pointed out elsewhere, the proof indisputably established that all the Oklahoma compression plants produced substantially the same product by similar means.

THE EVIDENCE INTRODUCED BY THE GOVERNMENT RESPECTING THE OPERATION OF THE PACKARD CAR WITH CASING-HEAD GASOLINE, THAT WAS LATER STRUCKEN

(Defendant's brief 164-5)

The Government in rebuttal placed Dykema on the stand. He testified in substance that he hired a Packard car and drove to Brady, Swanson & Colley's plant at Jenks, where, after first thoroughly draining the tank, casing-head gasoline of 85 gravity and  $17\frac{1}{2}$  pounds vapor tension was purchased and put into the tank. With this material no trouble in running the car was experienced, a speed of 35 miles an hour being attained on the way back (826-30). Moss, from whom the material was purchased, testified that it was raw casing-head gasoline of 85 gravity; that he saw the tank drained; that it was then filled with this new material; and that the car drove away (808-9). On surrebuttal the defendant produced O'Donnell, the driver, who said that in draining the car he opened but one drain, but on returning to Tulsa he discovered that a reserve tank, the existence of which he was at the time unaware of, must be drained, too (893). The court's own examination of the witness indicates that it looked with marked suspicion upon his testimony, evidently doubting whether the truth was being told (893-4). But in the end the court, after remarking that he did not like the witness's attitude, struck out the testimony with respect to the test and admonished the jury to disregard it.

This plain and simple recital shows how devoid of merit is the contention that error was committed. The testimony was merely corroborative of that mentioned under the preceding heading.

#### MUTILATION OF RECORDS

(Defendant's brief 166-175)

The argument advanced by defendant is apparently made, not to show error in the trial court's rulings, but to explain as best it can the damaging testimony introduced below. The following explanation of why the records were mutilated is certainly not impressive.

"The most natural, reasonable, and plausible explanation as to how these erasures and deletions occurred is apparent from the evidence. The boys handling these records had been given certain instructions, which they failed to carry out at once. Upon finding the matter becoming the subject of inquiry, it was the most natural thing conceivable that they would endeavor to conceal their failure to carry out instructions by making these erasures." (Brief 169.)

These mutilated records disclose that for a long while after December 2, 1916, when the shipments were first moved under the unrefined naphtha rate, the inspectors, whose duty it was to make tests and record the results, habitually designated the Kiefer product as "Kiefer gasoline." (The mutilation consisted in erasing gasoline, a magnifying glass

being needed to discern it.) These inspectors are referred to by defendant as "boys," but their ages, if that is at all material, ran from 18 to 27 (295).

The defendant's statement that the test sheets were nothing but lead pencil blotters is unwarranted (493-501, 578), although it is really immaterial whether they were or not. In this connection it may not be amiss to say that Timmons denied that he gave instructions to the inspectors how the material should be designated (291), but others testified that Timmons would indicate what kind of oil it was (494, 496). At any rate, Timmons testified that the laboratory testers used the name commonly employed around the plant (319-320). Although he also said that this unrefined naphtha was called everything around the plant—Kiefer gas; Chain Lightning; Over the Top; Hold it in her; Gilbert; TNT—(321), it was nevertheless designated as Kiefer gasoline on these mutilated records.

The defendant's contention that all this testimony has no bearing in proving guilt, because there was no proof that the mutilation was made by authorized employes for whose conduct defendant is answerable, needs no refutation. Indeed the defendant can not argue error in the face of its admission on the trial:

And now for the first time we have information that leads us to believe that these erasures were made by an employe of the

Gulf Refining Company subsequent to the beginning of the investigation by the government and we now make this statement so the court can be thoroughly informed of the actual conditions and also make it to be used *as an admission in this case* in so far as it may be pertinent subject to inquiry (511-512).

(Whether the whole or only a part of this admission was subsequently stricken, 512, is problematical.)

Another mutilation consisted in tearing off from the Port Arthur records the headings of monthly statements reading "Receipts of Kiefer gasoline," the mutilation not being discovered until agents of the Interstate Commerce Commission inspected similar copies at the Pittsburgh office.

#### RATES

(Defendant's brief 175-183)

The defendant is frank enough to admit that its contention is technical. One of the arguments advanced is that the product in question can not be shipped under the tariffs as gasoline, it not being a petroleum product. "It is not known"—so the argument runs—"whether casing-head gas comes from petroleum at all or not" (176-7). We pass this by as undeserving of reply.

The next argument—also concededly technical—is that no rates were legally in effect during federal control, the contention being that the President's proclamation taking over the railroads (40 Stat.



1733) and the Director General's Order No. 1 of December 29, 1917 (1461-2), directing existing rate schedules to be observed, did not have that effect. We likewise pass this by as meriting no reply.

One statement, however, must not go unchallenged. We refer to the assertion, repeated in different forms throughout the brief, "that the rates on unrefined naphtha were established by the carriers at defendant's request for the express purpose of transporting the traffic involved." It is true that the unrefined naphtha rate was established at defendant's request. There is nothing, however, in the record indicating that the carriers in publishing the rate ever said they did so to enable the defendant to transport *gasoline* as unrefined naphtha. Powers, of the St. Louis and San Francisco, said that Ellis proposed a rate, saying he was going to ship naphtha. "He explained it was a *low grade* article to be shipped to Port Arthur and to be there finished and reshipped" (565). Later he said: "We were requested to put in a rate on crude naphtha or unrefined naphtha or unfinished naphtha, I don't recall which. We put it in on the regular basis." Hereupon the court asked the witness if this was done without investigating what the commodity was. The witness replied: "That is impossible. We can't go out into the field. We don't know what is being shipped. We are hundreds of miles removed from the shipping point" (571). Again, "You ask if my knowledge and conception of the term unrefined naphtha extend to knowing

whether or not there was embraced within that term naphtha produced either by casing-head compression plants or by a topping plant. I don't think we could or would take into consideration the different methods of production. That made no difference to us. It was merely a question whether the product was unrefined naphtha" (572). Again, that if a shipper asked for a rate on brick it would not be assumed he was shipping stone. And if a refiner asked us to make a rate it is assumed he will ship what he is asking for (575). This is sufficient to dispose of the defendant's statement that the rate was published for the express purpose of transporting the traffic involved.

#### THE REJECTION OF EVIDENCE OFFERED BY DEFENDANT

(Defendant's brief 183-192)

LXII. On cross-examination League was asked to state what the controversy was between him and another inspector over the mode of describing the Gypsy's product; also whether he ever had any instructions from the head of the Bureau of Explosives as to how the commodity should be billed. In holding these questions improper the court expressly told the defendant that it might prove what advices, if any, the inspectors had given the Gypsy as to the proper manner of billing—an offer which the defendant failed to embrace (438). It is plain that what the defendant sought to elicit was hearsay testimony. From any point of view the questions were not proper cross-examination.

LXIII. League was asked on cross-examination whether at a meeting of casing-head producers in 1918 to discuss rules proposed by the Bureau of Explosives to the Interstate Commerce Commission objection was made that there was divergence in nomenclature of this particular article between the tariffs and the safety transportation rules. The court properly ruled that the question was objectionable as collateral and hearsay.

LXIV. We dispose of this with the statement that no exceptions were taken. But independently of that there is no merit in the argument advanced.

LXV. An examination of Powers' testimony leading up to the rulings complained of will disclose how devoid of merit is the contention that error was committed in refusing to permit the witness to answer the two questions put to him. (See his testimony set forth under the preceding heading.) The court rightly ruled that the tariff would speak for itself.

LXVI. The Texas statute did not become a law until March 24, 1919. The indictment period does not run beyond March 12, 1919. But independently of this it was inadmissible. It was offered, to use the defendant's language, "upon the theory of negating the implications sought to be raised by the government's testimony that the material shipped was customarily called gasoline." (Brief 190.) The very fact that specifications are prescribed admits that there are gasolines of other specifications.

LXXI. The rejection of the Oklahoma statute was entirely proper. It provides that gasoline exceeding 74 gravity is deemed unsafe and its sale for *vapor stoves or other domestic uses* prohibited. It clearly recognizes that a liquid may be gasoline, even though in excess of the gravity prescribed. It had no tendency to prove that the material in question was not gasoline. (Defendant's statement that the material shipped ran from 74 to 84 degrees is incorrect. Some of it was lower than 74.)

LXXIII. DeBarr was asked on cross-examination: "Do you know what is the fact, what the Corporation Commission of Oklahoma has done with respect to ruling as to whether or not taxes should be paid on this material as gasoline, whether inspected and taxed for gasoline?" An objection was sustained (884-5). The error complained of falls within *Packet Co. v. Clough*, 20 Wall. 528, 542; *Railroad Co. v. Smith*, 21 Wall. 255, 261; *Thompson v. Bank*, 111 U. S. 529, 535; *Shauer v. Alterton*, 151 U. S. 607, 617.

But independently of this the question was irrelevant. The action of the Oklahoma Corporation Commission in taxing or failing to tax such material as gasoline can not be considered in determining the meaning of the tariff.

#### OTHER ERRORS RELIED ON IN THE EXCLUSION OF EVIDENCE

(Defendant's brief 193-201)

LXI and LXX. The defendant contends that under *Lehigh Coal & Nav. Co. v. United States*,

250 U. S. 556, it should have been permitted as bearing on the question of intent, to introduce certified copies of the pleadings and of a temporary injunction in a suit instituted by it to enjoin the Director General from assessing gasoline rates. The indictment period, it will be recalled, ends March 17, 1919. The defendant's injunction suit was brought July 21, 1919. It is true, as defendant states, that this suit was filed before the indictment, but the record discloses that Stewart, whose business it was as an agent of the Interstate Commerce Commission to recommend after investigation prosecutions of shippers and railroads for violations of the Interstate Commerce act (506), was conducting an investigation at Port Arthur as early as May 2, 1919 (606), and at Pittsburgh as early as May 20, 1919 (543-4; Ex. 95, 1375). Clearly the bringing of this injunction suit *after* the indictment period had no tendency to disprove intent *during* that period. (The lower court, it will be remembered, expressly told the defendant that it might introduce proper testimony to negative intent, 438.)

LXVII. The objection is too refined to argue. Besides it is disposed of by the cases cited under LXXIII.

LXVIII. The question complained of was improper. Bacon & Hamor's definition of unrefined naphtha was in evidence. Whether it comprehended the casing-head product was a matter the jury could easily determine. Besides, in answer-

ing the very next question the witness answered the one now complained of.

LXXII. It is urged that error was committed because the court, in the course of an unrestricted cross-examination, sustained an objection to this question: "Are you able to state what are the finished commercial products of an ordinary petroleum refinery?" This in no way was material to the testimony given on direct. Besides, the long cross-examination that followed covered the very matter which defendant now says it sought to elicit.

#### IMPROPER CONDUCT ON THE PART OF GOVERNMENT COUNSEL AND THE COURT

(Defendant's brief 201-6)

LXXV. An examination of the record will disclose that the government sought to introduce certain Indian leases in favor of the Gypsy, a subpoena to produce them having been served (261, 167-8). The purpose was to show that the Gypsy in paying the lessors their royalties had done so on the basis that the product taken out of the wells was gasoline. A long argument over their introduction ensued (269-272). The court asked Payne what authorities he had to support his contention. The latter proceeded to read a passage from Cyc dealing with admissions of conspirators, when the defendant took the exception now relied on. Its frivolousness impelled the court to say: "Oh, they have a right to do that. We haven't time to take that up. You may have an exception." (274).

LXXVI. This is so wanting in merit that we content ourselves with a mere reference to the page (308) where the proceeding complained of occurred.

LXXIX. How devoid of merit is this assignment is shown by the very form of the exception taken: "I desire to except to the statement of counsel for the government, in the presence of the jury, being argumentative, concerning the construction——" (570).

XXX. It is indeed strange that this assignment should be urged. The witness had identified the exhibit as an original record of defendant's, in his own handwriting (466). After he had read the items now complained of, the exhibit was admitted with defendant's consent (472).

LXXVII and LXXVIII. Our only comment is to invite attention to pp. 360 and 363-4.

CXVIII. An exception was taken to Payne's argument to the jury that the defendant (through Ellis, its traffic manager), having failed to get a reduction by legitimate means of the gasoline rate in effect prior to December 2, 1916, resorted to illegitimate means to attain that end. The evidence amply warranted this statement. Indeed the jury's verdict confirms this. Besides, the defendant admits in its brief (269) that it had long sought rate reductions, "asking for them, however, *under the name 'gasoline.'*"

Complaint is made that Gann in arguing to the jury asserted that one of defendant's witnesses



came from the Mellon Institute, which was founded by the Mellon family of Pittsburgh, and that W. L. Mellon was defendant's president. There was evidence that the Institute was founded by a Mr. Mellon (766), but there was no proof that W. L. Mellon was defendant's president; on the contrary, that Davidson was (766). Gann's remark was, therefore, unsupported by the testimony. But if the record counts for anything, his conduct throughout the trial was clean and exemplary, and it is quite evident that the remark was innocently made, with no intention deliberately to misstate a fact. The court told the jury to disregard it (906).

It is next urged that Gann and Chambers made improper remarks, the former in saying that by reason of federal control the government had suffered financially as a result of the transaction in question, the burden being upon the public to bear; the latter in commenting on defendant's wealth, in saying it had deprived the government of thousands of dollars and that it had violated the safety transportation rules. What they really did say will be found at pp. 906-08. The exceptions—not taken until the following day—are of narrow scope (908). The court, after remarking that both sides went outside the proper domain, *without any objection being made*, cautioned the jury to disregard the remarks now complained of (908).

It is next urged that Chambers improperly referred to the proceedings before the grand jury. In this connection it should be borne in mind that the defendant expressly admitted on the trial that

the records had been mutilated before their production on that occasion (507). They were brought under subpœna either by Tryon, general manager, or Abel, assistant superintendent (506).

But the whole matter was again brought to the jury's attention just before the charge began. The court a second time admonished them to disregard the matters now complained of (911).

#### A VERDICT OF ACQUITTAL

(Defendant's brief 206-209)

We shall of course not pause to answer the contention that the court should have directed a verdict. The defendant deplorably misconceives the evidence when it says (290) that there was a complete failure to prove that defendant knew of the existence of the gasoline rates.

#### DEFENDANT'S REQUESTS FOR INSTRUCTIONS WERE PROPERLY REFUSED

(Defendant's brief 210-217)

It is urged that requests 2, 3, 4, 8, 9, 11, 12, 13, 15, and 16 should have been given because of the distinction they draw between gasoline and unrefined naphtha. It is argued that the jury should have been instructed that the defendant could not be convicted if the material shipped could be properly designated under either term. The charge given disposes of this. The jury could not have been misled in this respect. See in particular pp. 917, 923, 924, 925.

It is next urged that requests 5, 6, 14, and 18 should have been given, the theory apparently be-

ing that the jury should have been told that the defendant was not charged with misbilling, but with accepting concessions. Number 14 is the only one bearing on this matter, the other covering different subjects. The court's instructions, however, make it plain that the defendant was not charged with misbilling.

Number 7 was properly refused. The first part is bad. Furthermore, it is not true that the evidence complained of was "admitted solely for the purpose of establishing the intent." It was admitted for the purpose of establishing the proper name of the commodity shipped.

Number 17—"If you are in doubt whether casing-head gasoline is a product of petroleum oil, you must find defendant not guilty"—was properly refused. We do not pause to answer the argument advanced.

It is urged that number 19, designed to instruct the jury that it must be convinced beyond a reasonable doubt upon each element of the offense, should have been given. But the matter was fully covered in the court's charge.

Numbers 20 and 22 were likewise fully covered in the charge.

Numbers 23, 24, 25, 26, and 31, related to questions of intent, two of them dealing with the mutilation of the defendant's records. All these, too, were embraced in the charge.

There was no error in denying numbers 27, 28, 32, 34, and 35. They were in substance improper requests to charge on the *facts*.

Number 30 was likewise properly refused. Under the court's charge the jury could not have been left in doubt as to the matter it embraces. Furthermore, the court on the trial instructed the jury as to the scope of the evidence pertaining to the shipments made to the Texas Company (332).

Numbers 33 and 36 were likewise properly refused. The jury was fully instructed concerning the shipping regulations of the Interstate Commerce Commission. One of these requests embraces irrelevant matter, and the other is a request to charge on the *facts*.

Inasmuch as the additional requests came too late—when the jury was ready to return its verdict—there is no need of discussing them. No exceptions were taken, and it is unnecessary to point out how objectionable they are from the standpoint of law.

#### CONCLUSION

From beginning to end—from the plea in abatement to the concluding arguments—the record presents one long series of objections and exceptions. No one can read it without being convinced that this procedure was deliberately chosen as the best possible means of defense.

We offer no criticism; but we insist the defendant's rights were scrupulously upheld.

JAMES M. BECK,  
*Solicitor General.*

J. A. FOWLER,

*Special Assistant to the Attorney General.*

APRIL, 1925.





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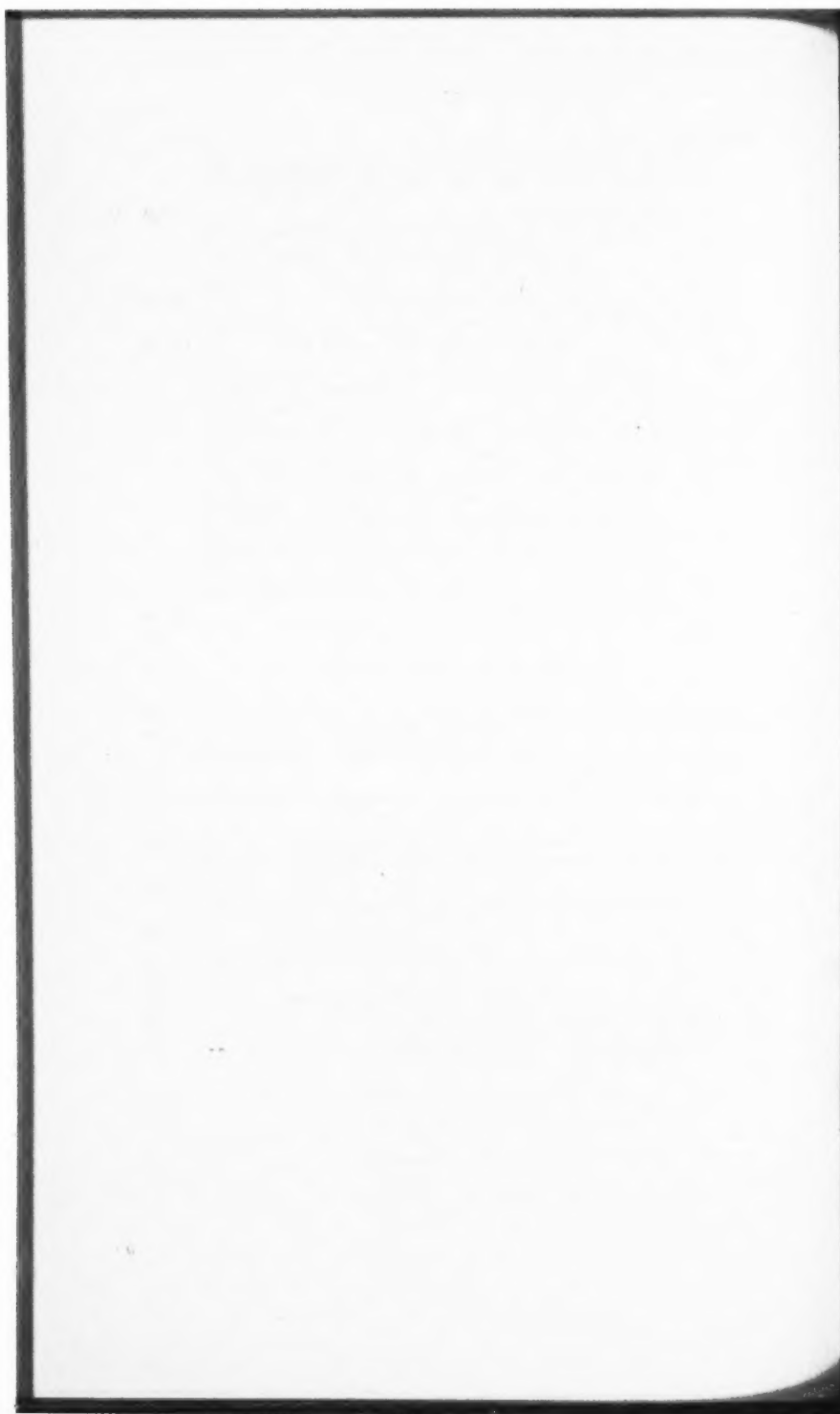
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# ***In the Supreme Court of the United States.***

OCTOBER TERM, 1924

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UNITED STATES OF AMERICA

*v.*

GULF REFINING COMPANY

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*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE EIGHTH CIRCUIT*

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**REPLY TO DEFENDANT'S MOTION TO DISMISS OR  
AFFIRM, ASSIGNMENT OF ERRORS, AND BRIEF  
AND ARGUMENT IN BEHALF OF THE UNITED  
STATES**

---

## **REASONS FOR FILING BRIEF AS AMICUS CURIAE**

This brief is filed by the Director General of Railroads in support of the writ, because, as stated in the petition, therefore, the judgment of the Circuit Court of Appeals—

Practically precludes the Government, through the Director General of Railroads, from collecting undercharges outstanding against the respondent in this respect, aggregating approximately \$500,000.

and—

Probably subjects the Government, through the Director General of Railroads, as Agent of the President, to liabilities for overcharges in this respect, aggregating \$500,000.

Furthermore, this brief will be more particularly concerned with those questions of the force and effect of the administrative regulations of the Interstate Commerce Commission, and of the carriers' tariff provisions, arising out of, or incident to the first and second reasons assigned for the granting of the petition for certiorari in that petition, which are—

(1) That the judgment of the Circuit Court of Appeals practically nullifies the powers of the Government under the so-called "Transportation of Explosives Act" to enforce the regulations promulgated by the Interstate Commerce Commission for the safe transportation of explosives and other dangerous articles.

(2) "That said judgment practically nullifies the powers conferred upon the Interstate Commerce Commission under Sections 1, 6, 13, and 15 of the Act to Regulate Commerce, to prescribe just and reasonable rates and classifications, and just and reasonable regulations and practices affecting the manner in which the property intended for transportation shall be marked and described."

By arrangement with the Solicitor General, these questions arising under the writ will be discussed in this brief rather than in the brief filed by him on behalf of the United States.

*Principally, however, there will be presented to the court in this brief the primary contention of the Government; that is, that the Circuit Court of Appeals erred in ignoring the binding effect of the carriers' published tariff provisions requiring the shipments embraced by the*

*indictment to be described as "gasoline" for transportation purposes, irrespective of what might be their proper description chemically, or for commercial purposes.*

Incidentally, it will be shown that there was abundant evidence in the testimony of the Government's experts and in the admissions of the defendant's witnesses that for chemical, and for commercial purposes as well, the shipments covered by the indictment were gasoline.

On the other hand, this brief will not discuss the strictly jurisdictional questions raised by the motion to dismiss, these questions being fully covered by the brief filed by the Solicitor General.

#### STATEMENT OF THE CASE

Certiorari was granted to review the judgment of the Circuit Court of Appeals for the Eighth Circuit reversing and remanding for new trial a judgment of conviction on which a fine of \$99,000 had been entered by the United States District Court for the Eastern District of Oklahoma on ninety-nine accounts, charging the respondent with receiving concessions and discriminations in rates on shipments of gasoline from Kiefer, Drumright, and Jenks, Oklahoma, to its refinery at Port Arthur, Texas, in violation of the Elkins Act of February 19, 1903, 32 Stat. 847, as amended June 29, 1906, 34 Stat. 587.

The shipments in question admittedly consisted of casing-head gasoline, a condensate of casing-head gas, shipped either "weathered," or blended with naphtha,

but had been billed to respondent by its subsidiary, the Gypsy Oil Company, as "unrefined naphtha," and respondent had paid only the lower charges applicable to that commodity, instead of the higher charges applicable to gasoline.

The case is before the court upon the respondent's motion to dismiss the writ of certiorari and to affirm the judgment of the Circuit Court of Appeals on the following grounds:

(a) That this court is without jurisdiction to review by certiorari or otherwise, a judgment of the Circuit Court of Appeals in favor of a defendant in a criminal case, reversing a conviction in a District Court.

(b) That even if this court has such jurisdiction in a proper case, it is not exercisable in this case, because the judgment of the Circuit Court of Appeals was a remand for a new trial, it being contended such judgment is not final within the meaning of Section 240 of the Judicial Code of 1911, 36 Stat. L. Chapter 231, page 1157.

(c) Because it is contended that the questions raised on certiorari are frivolous.

As already stated, this brief will not discuss grounds "a" and "b" of the defendant's motion to dismiss, except such incidental reference to ground "b" as are necessary to explain the inadvertent representation to this court in the petition for certiorari that the judgment of the Circuit Court of Appeals was one of reversal without remand for a new trial.

The defendant's motion to dismiss calls attention to the fact that in the petition for the writ, it was

represented, at least by implication, that the judgment of the Circuit Court of Appeals remanded for dismissal instead of for a new trial. In the first paragraph of that petition the judgment of the Circuit Court of Appeals is referred to as

reversing and remanding a judgment \* \* \*  
entered by the United States District Court,  
but in the fifth reason assigned for granting the petition, reference is made to

the grounds upon which that court (the Circuit Court of Appeals) reversed *and remanded for dismissal*.

The respondent's assumption, stated at page 22 of the Argument, that this erroneous representation was

doubtless inadvertently made in the absence of the mandate,

is correct. The circumstances of this inadvertent misrepresentation are too complicated to set out here, except to note that the opinion of the Circuit Court of Appeals itself reads "reversed and remanded." (Rec. 1692.) The petitioner's good faith not being questioned, it is, therefore, merely necessary to consider whether this court has jurisdiction to review a judgment of the Circuit Court of Appeals reversing and remanding for a new trial a conviction in a criminal case, and, if such jurisdiction exists, whether it should be exercised here.

It is submitted that such jurisdiction exists and should be exercised in this case. It will be demonstrated moreover, that none of the alleged errors



pointed out by the Circuit Court of Appeals constitute reversible error.

Even should this court, however, agree with the Circuit Court of Appeals that certain remarks by petitioner's counsel to the jury, and the admission of certain testimony, constituted reversible error, this court should still reform or set aside that portion of the opinion of the Circuit Court of Appeals by which that court undertakes to reverse, as without support in the evidence, the finding of the jury that the shipments were, in fact, gasoline, as charged in the indictment. That is, this court, should, in any event reverse the judgment of the Circuit Court of Appeals since it clearly appears that this portion of the opinion of the Circuit Court of Appeals, and not the other alleged errors pointed out by that Court, is the basis upon which it reversed the judgment of the District Court and the verdict of the jury. This is shown by the statement in the opinion of the Circuit Court of Appeals (Rec. 1691) that—

many errors are assigned to the admission and rejection of evidence, to the instructions of the court, to the refusal of request to instruct, and to comments by the court during the progress of the trial, which it is claimed were prejudicial and unfair, *but the view we take of the case renders it unnecessary to pass on them.*

It is our opinion that when all competent and relevant proof in the case is given a fair and impartial consideration the conclusion that the verdict is without support, is inevitable.

To proceed, therefore, to a new trial upon the basis of the opinion and judgment of the Circuit Court of Appeals as it now stands, must result in further mistrial of this case for the following reasons:

1. The Circuit Court of Appeals has clearly and unmistakably erred in holding that there was no evidence to support the jury's finding that the shipments were gasoline, as charged in the indictments, and such holding results from the arbitrary disregard by the Circuit Court of Appeals itself of competent and relevant evidence.

2. While the evidence before the court and jury was conflicting as to whether the shipments were gasoline or "unrefined naphtha," there was at least substantial evidence for the government that the shipments were gasoline. The nature of this evidence is briefly set out in the footnote.

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NOTE.—1. The defendant's admission, and independent proof, that all of the shipments from Kiefer and Drumright consisted of casinghead gasoline, a condensate of casinghead gas, blended with painter's or similar naphtha to reduce the vapor pressure to a ten-pound maximum (R. 179, 180, 549), and that all the shipments from Jenks consisted of straight casinghead gasoline, unblended with anything, but reduced by weathering to a maximum vapor pressure of ten pounds (Rec. 179, 180, 207, 554).

2. The defendant's admission that such blending and weathering had been done to bring the shipments within the maximum vapor pressure allowed by the Interstate Commerce Commission's Transportation Regulations for the Transportation of Dangerous Articles, and by the carrier's tariffs. (Rec. 679.)

3. Proof that the carrier's published tariffs required that "condensates of casinghead gas when reduced to a maximum vapor pressure of ten pounds per square inch and shipped either alone or blended with other petroleum products, be shipped and described as gasoline, casinghead gasoline or casinghead naphtha," and that such tariffs further required the shippers to certify that the shipments were "properly described by name \* \* \* according to the regulations

3. That there being substantial evidence before the court below, and the jury having found by its verdict, under appropriate instructions, that the petitioner had proved these shipments to be gasoline beyond a reasonable doubt, the Circuit Court of Appeals could not set aside such finding of fact by the jury merely because it differed with the jury as to the preponderance of the evidence in this respect, or as to the conclusions to be drawn from such evidence, or even though it believed such evidence did not prove such shipments gasoline beyond a reasonable doubt.

4. To permit a new trial in conformance with the opinion and judgment of the Circuit Court of Appeals would necessarily result in further mistrial because the trial court under that judgment and opinion, would be required to disregard arbitrarily, as the Circuit Court of Appeals has done, the require-

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prescribed by the Interstate Commerce Commission." (Rec. 436, 1159.)

4. Proof that the Interstate Commerce Commission's Regulations for the Transportation of Dangerous Articles made similar requirements. (Rec. 1216, 1270.)

5. Proof that the defendant's subsidiary certified on the bills of lading that the shipments were "properly described by name \* \* \* according to the regulations prescribed by the Interstate Commerce Commission." (Rec. 953, 959, 961, 963, 966.)

6. Proof, and the defendant's admission, that prior to December 2, 1916, all such shipments were billed and described by its subsidiary as gasoline (Rec. 188, 189, 208, 209) and that defendant paid the gasoline charges applicable thereto (Rec. 281).

7. Proof, and the defendant's admission that on and after December 2, 1916, when rates on "unrefined naphtha" were first published, defendant's subsidiary, without making any change whatever in the nature of its shipments (Rec. 480, 550), and by defendant's instructions, shipped and described such condensates as "unrefined naphtha," and defendants paid only the lower rate applicable to that commodity (Rec. 280).

8. Proof, and the defendant's admission, that both prior and subsequent to December 2, 1916, all other shippers shipped and described

ments of the carrier's published tariffs that the shipments be shipped and described as "gasoline"; the similar requirements of the Interstate Commerce Commission's Regulations Transportation of Dangerous Articles; the testimony of the petitioner's expert witnesses that the shipments were gasoline, as well as the defendant's admissions referred to in the foregoing footnote.

5. To permit either the Circuit Court of Appeals or the trial court on new trial to disregard the positive requirements of the carrier's published tariffs, and of the Commission's Regulations for the Transportation of Dangerous Articles, that these shipments be shipped and described as gasoline, would be to vitiate and nullify the powers conferred on the Interstate Commerce Commission by Sections 1, 6, 13, and 15 of the Interstate Commerce Act, and practically to nullify the powers of the government under the so-called Trans-

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similar shipments as gasoline (Rec. 427, 428), and that defendant's subsidiary itself continued to use this description in shipping similar shipments to other points (Rec. 214, 215, 479, 480, 486, 487).

9. Admissions by the defendant that the word "gasoline" had been erased from certain book records of such shipments subsequent to inspection by an examiner of the Interstate Commerce Commission, and prior to the production of the books before the grand jury, and subsequent admission that the erasures had been made by employees of the defendant. (Rec. 507, 511, 512.)

10. Proof that headings of certain of defendant's lists of these shipments had been cut off, but that letters written by defendant's Port Arthur office to defendant's Pittsburgh office referred to these same shipments as Kiefer "gasoline." (Exhibits 80, 81, Rec. 1354-1358; also Rec. 521-533.)

11. Testimony of expert witnesses for the government that such shipments were gasoline. (Rec. 822-842; 852-878; 878-892.)

12. Admissions of defendant's expert witnesses that such shipments were popularly known as gasoline. (Rec. 694.)

13. Letters of defendant's traffic manager Ellis describing such shipments as "gasoline" in asking reduction of rates thereon. (Rec. 1293, 1294, 1363, 1364, 1365, 1366, 1367, 1376, 1377.)

portation of Explosives Act, Criminal Code Section 233-236, 35 Stat. L. 1134, to enforce the regulations promulgated by the Interstate Commerce Commission for the safe transportation of Explosives and other dangerous articles.

Before discussing the issues raised by the defendant's motion to dismiss and affirm, the petitioner believes it will be helpful to the court to make a brief statement of the facts.

Defendant and the Gypsy Oil Company are both subsidiaries of the Gulf Oil Corporation, but for convenience the Gypsy Oil Company is herein referred to as defendant's subsidiary. The Gypsy Oil Company produced casing-head gasoline, a condensate from casing-head (petroleum) natural gas at its compression plants at Kiefer, Drumright, and Jenks, Okla. It is important that the court keep in mind that all of the shipments covered by the indictment were *southbound* shipments of this casing-head gasoline, either straight or blended with naphtha, and that the indictments are in no way concerned with the *northbound* shipments of the naphtha used for such blending. All of the shipments from Jenks, Okla., were *southbound* shipments of straight casing-head gasoline *unblended with anything else whatever*, the vapor tension of which had been reduced by weathering to a maximum of ten pounds in order to comply with the requirements of the carrier's tariffs, and of the Transportation of Explosives Regulations of the Interstate Commerce Commission, already referred to in the foregoing footnote. All of the shipments from Kiefer and Drumright were *southbound* shipments of casing-

head gasoline blended with naphtha to similarly reduce their vapor tension to a maximum of ten pounds. The blend was about 65 per cent casing-head gasoline and 35 per cent naphtha. By a reference to the foregoing footnote it will be seen that the carrier's tariffs and the Commission's Transportation of Dangerous Articles regulations required that—

Condensates of casing-head gas when reduced to a maximum vapor pressure of ten pounds per square inch and shipped either alone or blended with other petroleum products, be shipped and described as gasoline, casing-head gasoline, or casing-head naphtha.

That footnote further shows that the defendant's subsidiary certified on its bills of lading that the shipments were

properly described by name \* \* \* according to the regulations prescribed by the Interstate Commerce Commission.

The naphtha used for this blending at Kiefer and Drumright consisted of painter's or other heavy naphtha shipped by the defendant *northbound* from its refinery at Port Arthur to its subsidiary's compression plants at Kiefer and Drumright. The blending of painter's or other heavy naphtha with the more volatile casing-head condensate, reduced the vapor tension of the latter to the required maximum of ten pounds.

The indictments are in no way concerned with these *northbound* shipments of naphtha. The indict-

ments are for describing the *southbound* shipments of straight casing-head gasoline, or casing-head gasoline blended with this naphtha as "unrefined naphtha" instead of as "gasoline," as required by the carrier's tariffs and the Transportation of Dangerous Articles regulations of the Interstate Commerce Commission.

Defendant admits that prior to December 2, 1916, all of the *southbound* shipments by its subsidiary to it of casing-head gasoline weathered or blended, were billed and described in its subsidiary's bills of lading as "gasoline," and that the defendant paid the charges applicable to gasoline. On December 2, 1916, however, there became effective in the carrier's tariffs lower rates applicable to a commodity therein designated as "unrefined naphtha." The rate from Kiefer, for instance, on gasoline was 33 cents per 100 pounds and the rate on unrefined naphtha was 19½ cents. The rates from Drumright and Jenks on gasoline and unrefined naphtha, respectively, bore substantially the same relationship. The circumstances attending the publication of these lower rates on "unrefined naphtha" will be briefly referred to. First, however, the court should note that the defendant unqualifiedly admits that, without any change whatever in the character of the shipments, the defendant's traffic manager, who was also traffic manager of its subsidiary, the Gypsy Oil Company, ordered the Gypsy Oil Company thereafter to ship and describe such shipments as "unrefined naphtha"; that the Gypsy Oil Company accordingly so changed its shipping orders and descriptions for such shipments



from "gasoline" to "unrefined naphtha," though continuing to certify that they were

properly described by name \* \* \* according to the regulations prescribed by the Interstate Commerce Commission,

and that the defendant thereupon paid only the lower rates applicable to unrefined naphtha instead of the higher rates applicable to gasoline. The defendant further admits that all other shippers both before and after December 2, 1916, shipped and described similar shipments between the same points, and between other points, as "gasoline." It contends, however, that this admission is irrelevant because neither the defendant's knowledge of, nor any connection with such shipments by other producers of casinghead gasoline was shown.

The record further contains letters from one Ellis, Traffic Manager of the defendant written during the two years preceding December 2, 1916, during which he was attempting to obtain a reduction on the northbound rates on *naphtha* to Kiefer and Drumright, and a reduction in the southbound rates on the *gasoline* from Kiefer and Drumright. These letters will be further discussed. It will then be noted that Mr. Ellis specifically describes the *southbound* shipments as "gasoline," and describes as "naphtha" only the *northbound* shipments of naphtha used for blending with the southbound gasoline. It will also be noted that after the carriers had refused to reduce even the northbound rates because involving a reduction on a *refined product*, Ellis, in order to persuade them to

make such a reduction, represents that there will be two *southbound* shipments of "*gasoline*" for each *northbound* shipment of "*naphtha*." It further appears that the rate on "*unrefined naphtha*" was finally published on a request from Ellis for a rate under such designation, but that the carrier's traffic men responsible for the publication of the rate, testified that they did not know to what character of shipments Ellis intended to apply the rate, assuming that any shipments made would come within that description.

This brief statement of facts is merely for the preliminary information of the court, and it will be necessary to consider the evidence in some detail in demonstrating the error of the Circuit Court of Appeals in holding that the verdict of the jury was without support in the evidence.

## I

There was at least substantial evidence to support the jury's verdict that the shipments were gasoline, as charged in the indictment, and were not unrefined naphtha, as billed by the shipper. The evidence was, in fact, conclusive in this respect.

The Director-General desires to make clear at the outset that, for the purposes of this writ, it is not necessary to demonstrate to this court that the evidence before the jury established conclusively and beyond reasonable doubt that the shipments consisted of gasoline, as charged in the indictment, and not of unrefined naphtha, as billed by the shipper, under the directions of the defendant. The Director General submits that the error of the Circuit Court

of Appeals will be established if it is shown that there was substantial evidence to this effect before the jury. If there was such substantial evidence neither the Circuit Court of Appeals nor this court could, under the law, disregard and set aside the jury's finding that the shipments consisted of gasoline, as charged, even though the Circuit Court of Appeals or this court should differ with the jury as to the preponderance of the evidence, or the conclusions to be drawn therefrom, or as to whether the evidence established such fact beyond a reasonable doubt.

As the Director General understands the law, the verdict of the jury in this case that the shipments were gasoline, found under appropriate instructions by the court that—

unless you find from the evidence beyond a reasonable doubt that the commodity so shipped and so received by the defendant was gasoline, it is your duty to find the defendant not guilty (Rec. 917)—

could not be set aside by an appellate court unless the court would be warranted in saying that as a matter of law the evidence before the jury *could not* establish such fact. The Director General understands that while the trial court may instruct a verdict for the defendant at the close of the government's case, or at the close of all the testimony, if the evidence before the jury could not, as a matter of law, support a verdict of guilty, an appellate court can not *after* submission of the question to the jury under appropriate instructions, set aside the jury's verdict merely

because there was a conflict in the evidence, and because the appellate court might differ with the jury as to the conclusions to be drawn from the evidence. (Encyclopedia, U. S. Supreme Court Citations, vol. 11, p. 935; *Sparf & Hansen v. U. S.*, 156 U. S. 51, 99-100.)

A consideration of the evidence, however, before the jury will demonstrate in this case that *the jury was justified beyond a reasonable doubt* in finding that the shipments consisted of gasoline. It will further demonstrate that the conclusion of the Circuit Court of Appeals to the contrary resulted from an arbitrary disregard of competent evidence under a misapprehension of the law, and from a misconception of the true significance of much of the defendant's evidence which the Circuit Court of Appeals considered required an opposite conclusion to that reached by the jury.

The substantial and, indeed, conclusive nature of the evidence before the jury upon which it found that the shipments consisted of gasoline as charged has already been outlined in the footnote on page 7. It will conduce to the convenience of the court to discuss the evidence substantially under the headings indicated in that footnote.

- (a) **THE EVIDENCE SHOWS THAT THE CARRIER'S PUBLISHED TARIFFS REQUIRED THAT CONDENSATES OF CASINGHEAD GAS, WHEN REDUCED TO A MAXIMUM OF TEN POUNDS PER SQUARE INCH AND SHIPPED EITHER ALONE OR BLENDED WITH OTHER PETROLEUM PRODUCTS, BE SHIPPED AND DESCRIBED**

AS GASOLINE, CASINGHEAD GASOLINE, OR CASING-HEAD NAPHTHA, AND FURTHER REQUIRED THAT THE SHIPPER CERTIFY THE SHIPMENTS TO BE "PROPERLY DESCRIBED BY NAME \* \* \* ACCORDING TO THE REGULATIONS PRESCRIBED BY THE INTERSTATE COMMERCE COMMISSION."

THE EVIDENCE FURTHER SHOWS THAT DEFENDANT'S SUBSIDIARY UNDER DEFENDANT'S INSTRUCTIONS SO CERTIFIED ON ITS BILLS OF LADING.

THE INTERSTATE COMMERCE COMMISSION'S "REGULATIONS FOR THE TRANSPORTATION OF DANGEROUS ARTICLES OTHER THAN EXPLOSIVES BY FREIGHT" MADE SIMILAR REQUIREMENTS.

The outstanding feature of the opinion of the Circuit Court of Appeals is, as was noted in the petition under which this court granted the writ of certiorari, the failure of the Circuit Court of Appeals even to mention these requirements of the carrier's tariffs and of the Commission's regulations. This is the more remarkable since not only was there abundant and independent proof, but the defendant admitted, that all of the southbound shipments from Jenks consisted of casinghead gasoline unblended with anything whatever (Rec. 179, 180, 207, 554), while there was like proof and like admissions that its shipments from Kiefer and Drumright consisted of casinghead gasoline blended with painter's naphtha (179, 180, 549). Without making any question of these facts, the record shows that the defendant simply contended that it was justified in describing such shipments of casinghead gasoline, blended or unblended, as "unrefined naphtha."

Supplement 5 to Western Classification No. 55,<sup>1</sup> effective August 29, 1918, provided as follows:

(k) Liquid condensates from natural gas of oil wells, made either by the compression or absorption process, alone or blended with other petroleum products, must be described as + liquified petroleum gas when the vapor pressure at 100 degrees F. (90 degrees F., Nov. 1st to March 1st) exceeds ten pounds per square inch.

*When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding ten pounds per square inch, it must be described and shipped as gasoline, casinghead gasoline or casinghead naptha.* [Italics ours.]

\* \* \* \* \*

*When the liquid condensate, alone or blended with other petroleum products, has a vapor pressure not exceeding ten pounds per square inch, it must be described as gasoline, casinghead gasoline, or casinghead naptha, and must be shipped in metal drums or barrels complying with Specification No. 5; or in ordinary tank cars, sixty pounds test class, equipped with mechanical arrangements for closing of dome covers, as specified in Masyer Car Builders' specifications for tank cars.*

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<sup>1</sup> The carrier's tariffs under which the shipments embraced by the indictment moved were all subject to the Western Classification. See, for instance, Southwestern Lines Tariff No. 26 T, Supplement 52 (Rec. 1038), effective November 16, 1916, which provides:

"Governed except as otherwise provided herein by Western Classification No. 54 \* \* \* or reissues thereof."

Also Supplement No. 53 to the same tariff (Transcript 1041), making similar provision. The prior and subsequent issues and supplements of these tariffs in the record are too numerous to give all record references. However, all the applicable tariffs contained this provision.

Both Western Classification No. 55, as well as Western Classification No. 54, and its supplements, contain in addition, the following provisions:

### GENERAL RULES

"1711. Carriers that are subject to the Act to Regulate Commerce *must not receive* shipments of articles defined as dangerous by these regulations, when the shipments are not packed, marked, labeled, *described*, and certified as prescribed herein.

\* \* \* \* \*

NOTE.—Rule 44 of Western Classification No. 54 and its supplements, which was effective during the prior period of the indictment, carried substantially the same rule, which, however, read as follows (Rec. 1079):

"(k) Liquid condensate from natural gas or from casinghead gas of petroleum oil wells whose vapor tension at 100 degrees F. (90 degrees F., Nov. 1 to March 1st) exceeds ten pounds per square inch, must be described as liquefied petroleum gas.

\* \* \* \* \*

"When the condensate, blended or unblended, with other products has a vapor tension as above defined, not exceeding ten pounds per square inch, and is shipped as 'gasoline' in an ordinary tank car, sixty pounds test class, defined in Master Car Builders' Association specifications for tank case, the safety valves of such a car must be set to operate at twenty-five pounds per square inch, with a tolerance of one pound above or below, etc."

Western Classification No. 54 and its supplements also contain the following provision under the heading:

#### *List of principal dangerous articles*

Names of dangerous articles.	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
* * *	* * * * *
Gasoline (see Note 1)	Pars. 1807 (c), 1822, 1824 to 1827. Gasoline made by compressing natural gas or by blending liquefied petroleum gas with refinery gasoline or naphtha may be described and shipped as gasoline, provided the vapor pressure does not exceed 10 pounds per square inch.

The above provision was also carried in Supplement 5 to Western Classification 55, and subsequent supplements. (Rec. 1150, 1151.)



"1712. All shipments of articles subject to these regulations offered for transportation in interstate commerce, must be properly described by the shipper in his shipping order and bill of lading, under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing.

"The same description of contents must be plainly marked on the outside of each package." (Western Classification No. 55, Rec. 1143; Western Classification No. 54, Rec. 1066.)

#### LIST OF PRINCIPAL DANGEROUS ARTICLES

(d) A shipment described under a definite and proper name not in the following list and on a shipping order with no notation as to labels applied and no shipper's certificate, will be assumed by the carrier in the absence of knowledge to the contrary, to be not dangerous under these regulations.

(NOTE.--The name "unrefined naphtha" does not appear in the list referred to.) (Western Classification No. 55, Sup. 5, Rec. 1147; Western Classification No. 54, Rec. 1069.)

All of these provisions were tariff publications of the provisions of the Interstate Commerce Commission's "Regulations for Transportation of Dangerous Articles other than Explosives by Freight," originally effective October 1, 1914 (Rec. 1216 to 1240) and the amended regulations (Rec. 1241 to 1270).

It was admitted, as well as independently proved, as already noted, that the shipments from Kiefer, Drumright, and Jenks consisted of--

Liquid condensates from natural gas of oil wells made \* \* \* by the compression \* \* \* process \* \* \* alone or blended with other petroleum products (having) a pressure not exceeding ten pounds per square inch. (Rec. 179, 180, 207, 554, 549.)

In other words, the shipments came precisely within the provisions of the Western Classification, requiring that such shipments—

must be described and shipped as gasoline, casinghead gasoline, or casinghead naphtha.

Under the further requirements of the Western Classification already noted that—

all shipments of articles subject to these regulations offered for transportation in interstate commerce, must be properly described by the shipper in the shipping order and bill of lading, under the specific or general name provided for the description of such freight by the tariff classification and tariff governing—

the only description by which they could be so shipped was "gasoline," as the carrier's tariffs contain no specific rates on casinghead gasoline or casinghead naphtha. Equally, of course, billing such shipments as "unrefined naphtha" was a clear violation of the Western Classification.

The binding effect of such tariff provisions upon shipper and carrier alike is so clearly established in this court as hardly to necessitate citation. (*International Coal case*, 230 U. S. 184, page 197; *Erie Railroad Co. v. Stone*, 244 U. S. 322, pages 335-336;

*Davis v. Henderson*, United States Supreme Court, decided October 27, 1924.)

That to permit the Circuit Court of Appeals to ignore completely, as it has done, these binding tariff provisions must result in vitiating not only the most important provisions of the Interstate Commerce Act, but must, as well, practically nullify the powers of the government under the Transportation of Explosives Act, will subsequently be shown. What it is desired here to point out is that such tariff provisions, and such transportation regulations by the Interstate Commerce Commission, constituted at least some substantial evidence that these shipments were for transportation purposes, and within the meaning of the carrier's tariffs, "gasoline," and could not be "unrefined naptha." What will be further elaborated is that the conclusion of the Circuit Court of Appeals to the contrary is due not only to the ignoring of these tariff provisions and transportation regulations, but to its failure to appreciate that the question before the jury was not what these shipments might be in a technical, chemical sense, but what they were within the meaning of the tariffs for rate purposes.

It should perhaps be noted that the phraseology of paragraph (k) of Rule 44 to Western Classification No. 54 and of its supplements, was not so definite as Supplement 5 to Western Classification No. 55 in requiring that liquid condensates, blended or unblended, when reduced to a vapor pressure not to exceed ten pounds

*be described as gasoline, casinghead gasoline or casinghead naphtha,"*

which was the specific wording of Supplement 5.

As shown by the footnote on page 19, paragraph (k) of Rule 44, Western Classification No. 54 and its supplements provided:

When the condensate blended or unblended with other products has a vapor tension as above defined not exceeding ten pounds per square inch, and *is shipped as gasoline* in an ordinary tank car \* \* \* the safety valves of such cars must be set, etc.

However, as shown by the same footnote, Western Classification No. 54 and its supplements, as well as Supplement 5 to Western Classification No. 55, all carried the following provision as well:

*List of principal dangerous articles*

Names of dangerous articles.	References for packing requirements, paragraph numbers, remarks for information, and rules for exceptions of similar articles.
* * *	* * *
Gasoline (see Note 1)---	Pars. 1807 (c), 1822, 1824 to 1827. Gasoline made by compressing natural gas or by blending liquefied petroleum gas with refinery gasoline or naphtha <i>may be described and shipped as gasoline</i> , provided the vapor pressure does not exceed 10 pounds per square inch.

There was some suggestion by defendant's counsel on trial that the use of the word "may" in this latter provision, instead of "must" was permissive, and did not require such shipments to be described as gasoline. (Rec. 433, 434.) The court, however, considered the provisions as obviously mandatory

(Rec. 434), since intimately connected with safety of transportation.

The court's view is corroborated by General Rule 1711, already quoted and contained in Western Classification No. 54, as well as Western Classification No. 55, that—

Carriers \* \* \* *must not receive shipments of articles* defined as dangerous by these regulations when shipments are not packed, marked, labeled, *described*, and certified as prescribed herein.

Clearly, therefore, the provisions that "gasoline" made by compressing natural gas, or by blending liquefied petroleum gas with refinery gasoline or naphtha, *may* be described and shipped as gasoline is mandatory, since otherwise, under the rules in question, it could not be shipped at all.

Furthermore, the defendant's Vice President Tabor admitted (Rec. 679) that the weathering of the shipments of casinghead gasoline from Jenks, and the blending of shipments of casinghead gasoline from Kiefer and Drumright, was to conform to these regulations.

Any contention, therefore, by the defendant that it could, by the simple device of shipping and describing such condensates, blended or unblended, as "unrefined naphtha" instead of as gasoline, escape the whole intent and purpose of the Western Classification provisions, and of the Commission's Regulations for the Transportation of Dangerous Articles, hardly deserves serious consideration.

In any event, the Circuit Court of Appeals itself made no attempt to distinguish in this respect between shipments in the indictment prior to the effective date of the more specific language of Supplement 5 to Western Classification No. 55, and shipments on and after that date.

The Director General therefore submits that the provisions of the Western Classification, the similar provisions of the Commission's Regulations for the Transportation of Dangerous Articles, and the admitted conduct of the defendant itself in connection with such tariff provisions and such transportation regulations, alone furnishes practically conclusive evidence that the commodity shipped by the defendant was "gasoline," as found by the jury.

- (b) THE EVIDENCE SHOWED, AND THE DEFENDANT ADMITTED, THAT PRIOR TO DECEMBER 2, 1916, EXACTLY SIMILAR SHIPMENTS TO THOSE COVERED BY THE INDICTMENT WERE BILLED TO IT BY ITS SUBSIDIARY DESCRIBED AS "GASOLINE," AND THAT DEFENDANT PAID THE GASOLINE CHARGES APPLICABLE THERETO, BUT THAT ON AND AFTER DECEMBER 2, 1916, THE DEFENDANT'S SUBSIDIARY, WITHOUT MAKING ANY CHANGE WHATEVER IN THE NATURE OF ITS SHIPMENTS, SHIPPED AND DESCRIBED THEM AS "UNREFINED NAPHTHA," AND DEFENDANT PAID ONLY THE LOWER RATE APPLICABLE TO THAT COMMODITY.

As has been seen under the foregoing subheading, the defendant admitted that its southbound shipments of casinghead gasoline from Kiefer and Drumright to Port Arthur were blended with naphtha, and that its southbound shipments from Jenks of casinghead gasoline, unblended, were "weathered," in order to bring them within the Interstate Com-

merce Commission's transportation requirement of a maximum vapor pressure of 10 pounds, in which case the Transportation Regulations, as well as the tariff requirements of the carrier's Western Classification, required them to be shipped and described as gasoline, casinghead gasoline, or casinghead naphtha.

It has furthermore been seen that the defendant certified that all these shipments were described as required by the Interstate Commerce Commission's regulations. Nevertheless, the defendant admits that prior to December 2, 1916, exactly similar shipments to those covered by the indictment were billed and described by its subsidiary as "gasoline" (Rec. 188, 189, 208, 209), and that the defendant paid the gasoline charges applicable thereto. (Rec. 281.) It further admits that on and after December 2, 1916, when rates on unrefined naphtha were first published, the defendant's subsidiary, *without making any change whatever in the nature of its shipments* (Rec. 480-550), shipped and described its shipments as "unrefined naphtha," and the defendant paid only the lower rate applicable to that commodity. (Rec. 280.)

It further appears that one Donovan was general superintendent of the gasoline department of both the Gulf Refining Company and the Gypsy Oil Company, and that he reported to Mr. Tabor, who was Vice President of the Gulf Company, and that Mr. Ellis was Traffic Manager for both Companies. (Rec. 246, 248.) Moreover, it was admitted Mr. Ellis, as Traffic Manager of the Gulf Company, in-



structed Donovan how to ship the product in question. (Rec. 484.)

The defendant attempts to explain this change in description and to mitigate its force as an admission as to the real character of the shipments, by contending that prior to December 2, 1916, there was no rate on "unrefined naphtha" from Kiefer, Drumright, or Jenks to Port Arthur. It has already been seen, however, that the defendant's subsidiary, both prior to December 2, 1916, and subsequent to that date, certified that its shipments were—

properly described by name \* \* \* according to the regulations prescribed by the Interstate Commerce Commission,

and there is no pretense that there was any difference in the requirements in this respect of the Western Classification, or of the Commission's transportation regulations prior and subsequent to December 2, 1916, at least until the effective date of Supplement 5 to Western Classification No. 55, August 29, 1918. Yet it has been seen that the change in the description of the defendant's shipments was not coincident with the change in the Western Classification in August, 1918, but with the publication by the carriers in December, 1916, of a lower rate from Kiefer, Drumright, and Jenks to Port Arthur on a commodity designated as "unrefined naphtha" than applied between the same points on "gasoline."

It is the circumstances, however, in connection with this very publication of a rate on a commodity designated as "unrefined naphtha" from Kiefer, Drum-

right, and Jenks to Port Arthur, which furnish a conclusive answer to the defendant's attempt to mitigate the force of the admission involved in their prior designation of their shipments as "gasoline." These circumstances are shown in certain letters passing between the defendant's traffic manager Ellis and the carrier's officials responsible for the final publication of a rate on a commodity designated as "unrefined naphtha," together with the testimony of certain of the officials themselves, which will subsequently be discussed in greater detail. It will suffice to say here that Ellis' original request was for a reduction in the rate on "gasoline" from Kiefer, Drumright and Jenks *southbound*, and for a reduction on the rate on "naphtha" *northbound* only, and that the testimony of the traffic officials shows that when a rate on a commodity designated as "unrefined naphtha" from Kiefer, Drumright, and Jenks to Port Arthur was published, the traffic officials themselves did not know to exactly what commodity the defendant intended to apply the rate, or to what commodity the defendant, in fact, applied it. (Rec. 571, 573 to 576.)

(c) **THE EVIDENCE SHOWED THAT BOTH PRIOR AND SUBSEQUENT TO DECEMBER 2, 1916, ALL OTHER SHIPPERS SHIPPED AND DESCRIBED SIMILAR SHIPMENTS AS GASOLINE BETWEEN THESE SAME POINTS AND OTHER POINTS AS WELL, AND THAT THE DEFENDANT'S SUBSIDIARY ITSELF, EVEN AFTER THAT DATE, CONTINUED TO USE THIS DESCRIPTION IN SHIPPING SIMILAR SHIPMENTS TO OTHER POINTS.**

After one League, an inspector of the Bureau of Explosives, had testified (Rec. 409) that he had inspected practically all casinghead gasoline compression plants throughout the country, including

Oklahoma, Wyoming, Pennsylvania, West Virginia, Illinois, and Ohio, and after general testimony that all these plants shipped and described casinghead gasoline, blended or weathered, to a maximum vapor pressure of ten pounds, as gasoline, and after starting to enumerate all such plants that he had inspected in Oklahoma, he was stopped by Mr. Swacker, of counsel for the defendant, with the statement that the defendant would admit that League would testify that all other shippers shipped and described such shipments as gasoline. (Rec. 427.) Mr. Swacker, however, objected to the relevancy of the testimony and of the admission on the ground that, so far as the defendant was concerned, it was hearsay evidence and could not be used as an admission against it of the character of the shipments. The admission of this evidence is one of the alleged errors which the opinion of the Circuit Court of Appeals states (Rec. 1691):

would require a reversal,  
but none of which it appears were the actual basis of reversal, since, as has been noted, the Circuit Court of Appeals actually reversed solely on the ground that the evidence did not support the jury's finding that the shipments consisted of gasoline.

It is desired to point out, however, that even assuming that it would have been error to have admitted this testimony as an admission against the defendant of the character of the shipments, it was admissible as evidence of the general transportation and trade designation of the commodity.

Moreover, the Circuit Court of Appeals is in error in stating in the same portion of its opinion, that this evidence was admitted

without a showing that they (shipments of other manufacturers) were substantially similar to those of the Gypsy Company. (Rec. 1691.)

A reference to League's testimony, particularly at pages 447 to 451, will show that League testified that

the commodity shipped by the Gypsy was practically of the same character as that shipped by other people,

and is so quoted by defendant's counsel himself. It is true that by the skillful, misleading questions of defendant's counsel (Rec. 447 et. seq.) the witness was led into saying that there "might have been" a variation in the amount of blending material. He testified, however, unequivocally (Rec. 448) that he never heard anyone except the Gulf Refining Company and its employees refer to such blended shipments as "unrefined naphtha," but that they were invariably called by everyone else "gasoline," and (Rec. 450 and 451) that he had never seen this blended commodity described in any billing and shipping orders to any other refinery than that of the defendant, as "unrefined naphtha."

Furthermore, the Circuit Court of Appeals misconceived the true significance of League's testimony that the blend of certain other shippers who shipped and described the blended commodity as "gasoline," contained as much as 75 per cent naphtha. The Circuit Court of Appeals says (Rec. 1691):

that testimony was admitted \* \* \* in the face of proof that they were not of uniform blend with those of the Gypsy Company, but contained, in one instance, as much as 75 per cent naphtha.

The only even plausible theory upon which the defendant itself can justify describing its shipments as "unrefined naphtha," is because of the blending of the casinghead gasoline with the heavy naphtha shipped north from Port Arthur for that purpose, the defendant's contention being that such naphtha used for blending was not refined naphtha, but crude, heavy or painter's naphtha. Of course, on this theory, the more naphtha in the blend, the more plausible becomes the defendant's excuse for calling the blend "unrefined naphtha." Therefore, League's evidence that the blended commodity of other shippers, even where the proportion ran to 75 per cent, was still invariably called "gasoline," only makes League's testimony the stronger against the defendant.

(d) **THE EVIDENCE SHOWED ADMISSIONS BY THE DEFENDANT THAT THE WORD "GASOLINE" HAD BEEN ERASED FROM CERTAIN BOOK RECORDS OF THE SHIPMENTS EMBRACED BY THE INDICTMENT SUBSEQUENT TO INSPECTION BY AN EXAMINER OF THE INTERSTATE COMMERCE COMMISSION, AND PRIOR TO THE PRODUCTION OF THE BOOKS BEFORE THE GRAND JURY, AND A SUBSEQUENT ADMISSION BY THE DEFENDANT THAT THE ERASURES HAD BEEN MADE BY AN EMPLOYEE OF THE DEFENDANT.**

The Circuit Court of Appeals says in its opinion, Rec. 1682, 1683:

It was shown, and the fact emphasized by the prosecution, that some of the Gulf Refining

Company's records which showed the receipt of the commodity at Port Arthur in the early part of 1917, described it as "Kiefer Gasoline," and that the word gasoline in many instances had been erased, and that the books were in that condition when they were presented to the grand jury. It was not shown who kept the books, nor who made the erasures.

It is quite impossible to explain upon what basis the Circuit Court of Appeals felt warranted in stating, as shown above, that

it was not shown who kept the books, nor who made the erasures.

The record shows, page 507, the following:

Mr. DIGGS, of counsel for the defendant. The defendant will admit, at the time of the surrender of these books to the United States authorities at Muskogee, to be used before the grand jury, that these erasures appeared in them.

Mr. PAYNE (of Counsel for the Government). Your honor, I ask leave to ask him (Stewart, Agent of the Interstate Commerce Commission, who had examined the books) a couple of more questions, and then put Mr. Gann on the stand.

The COURT. No; they admitted that these erasures appeared on the books, and appeared there when the books were delivered into the possession of the Government, and came from their possession.

Mr. DIGGS. That is all right.

The record then shows, pages 508 to 511, numerous places where such erasures had been made, and then on page 511, a further admission by Mr. Diggs, reading as follows:

Mr. DIGGS. Before we proceed, I have a statement I would like to make to the court. I desire to state to the court that the erasure of the word gasoline in the items forming the word Kiefer gasoline in Government's Exhibit 77 and 78 first came to my knowledge before the book was surrendered to the United States authorities at Muskogee for the use before the grand jury. My attention was directed to the erasures and explanation given to me, the erasures were made contemporaneously with the entries, and for the purpose of making them speak the truth, and it was not until after the adjournment at noon to-day that we discovered that they were otherwise made and now for the first time we have information that leads us to believe *that these erasures were made by an employee of the Gulf Refining Company subsequent to the beginning of the investigation by the Government, and we now make this statement so the court can be thoroughly informed of the actual conditions, and also make it to be used as an admission in this case in so far as it may be pertinent subject to inquiry.*

The record then shows, page 511, that Mr. Chambers, who was also of counsel for the Government, objected to this admission being made before the jury in the middle of testimony from which the jury



most apparently must necessarily reach the very conclusion which the defendant offered to admit, Mr. Chambers' idea obviously being that the admission was made in the hope of avoiding the still more unfavorable effect on the jury of the Government's incontrovertible evidence of the facts. Mr. Diggs then stated:

I am not offering it to the jury in the trial of this case, but I am offering it to the court, so the court will understand the condition.

The COURT. I will exclude the statement at this time from the consideration of the jury.

The Government then introduced further testimony by the Witness Otey, a laboratory inspector of the Gulf Refining Company at Port Arthur, proving the handwriting of the entries to be those of one Koontz, another employee of the Gulf Refining Company, and proving innumerable erasures of the word "gasoline" following the word "Kiefer." (Rec. 512 to 521.)

The admission of defendant's counsel, and the independent testimony in this respect, speak for themselves, and further comment on this portion of the opinion of the Circuit Court of Appeals would appear superfluous.

- (e) **THE EVIDENCE SHOWS THAT HEADINGS OF CERTAIN OF DEFENDANT'S RECORDS OF THE SHIPMENTS EMBRACED BY THE INDICTMENT HAD BEEN CUT OFF, BUT THAT LETTERS WRITTEN BY DEFENDANT'S PORT ARTHUR OFFICE TO DEFENDANT'S PITTSBURGH OFFICE REFERRED TO THESE SAME SHIPMENTS AS KIEFER "GASOLINE," AND THAT APPARENT DUPLICATES OF SUCH RECORDS ATTACHED TO SUCH LETTERS BORE HEADINGS READING "RECEIPTS OF KIEFER GASOLINE."**

In the same portion of the opinion of the Circuit Court of Appeals just commented upon, it is stated (Rec. 1683):

It was also shown that the heading on a number of pages listing shipments of the commodity from Oklahoma to Pittsburgh, had been cut off, and that letters written to the Pittsburgh office in connection therewith, referred to some of the shipments as Kiefer gasoline. These erasures and changes were characterized as admissions and introduced as such.

It is difficult to tell from this statement whether the Circuit Court of Appeals considered the admission of the testimony referred to at page 1691 of the record, as one of the assignments that—

are in our judgment meritorious \* \* \*  
and would require a reversal. (Rec. 1691.)

If so, the Circuit Court of Appeals has stated no ground for such a holding, and it is submitted that there was abundant justification for permitting such evidence to go to the jury as evidence of the defendant's actual knowledge of the real character of their shipments covered by the indictment, and evidence of its attempt to conceal such knowledge. That part of the Government's Exhibit 80, which appears at Rec. 1330, was a sheet containing a list of cars showing "outages," etc., for the month of April, 1917. This sheet appears to have been made in duplicate, and the heading had been cut off of the copy as handed to the Government agent. In response to a subpoena *duces tecum*, the other copy was turned over to the

Government during the trial, and that copy is in evidence as Government Exhibit 81 and 82. (Rec. 1354 to 1358.) Exhibit 81 is a letter addressed to the defendant's auditor at Pittsburgh, and begins:

Our April oil statement will show as a receipt,  
146 cars of *gasoline* from Kiefer, etc.—

and Exhibit 82, which is the list attached to Exhibit 81, is apparently a duplicate of Exhibit 80, and is headed:

“Receipts of Kiefer Gasoline, April 1917.” •  
(See testimony Interstate Commerce Inspector  
Stewart, Rec. 429 to 431.)

It is difficult to understand on what ground the Circuit Court of Appeals could have considered that these deliberate erasures and mutilations by defendants of records which it realized were compromising, and indeed damning, were not properly receivable as admissions against the defendant, and did not constitute some evidence at least, which would support the jury's finding that the shipments embraced by the indictment were actually gasoline, as therein charged.

(f) **EVIDENCE OF EXPERT WITNESSES FOR THE GOVERNMENT THAT SHIPMENTS EMBRACED BY THE INDICTMENT WERE GASOLINE, AND ADMISSIONS OF DEFENDANT'S EXPERT WITNESSES THAT COMMODITY SHIPPED WAS AT LEAST POPULARLY KNOWN AS GASOLINE**

The testimony of the expert witnesses both of the Government and of the defendant is so voluminous and diffuse as to make adequate discussion of it extremely difficult within any reasonable limits of this brief. It would, therefore, seem that the only practicable method of discussing this expert testi-

mony will be by outlining its general scope and the points of agreement or difference between the experts, with only such brief abstract of their testimony as will show the general conclusions here drawn from it warranted.

In general it may be said that all of the Government's experts agreed that both the shipments from Kiefer and Drumright of casinghead gasoline blended with naphtha, and the shipments from Jenks of unblended casinghead gasoline, were not only popularly known as gasoline, but were known as such throughout the gasoline industry; were chemically, and within the meaning of the tariffs as well, gasoline: and could not properly, under any circumstances, be described as "unrefined naphtha."

On the other hand, the defendant's experts, with equal unanimity, testified that the shipments were not gasoline *within their definition* of that term, and might properly be described as "unrefined naphtha."

It is, however, particularly to be noted in connection with the testimony of the defendant's experts:

First, that, without exception, they confined their definition of the term gasoline to such petroleum products as would operate an automobile or other internal-combustion engine.

Second, that no one of the defendant's experts testified that these shipments were not gasoline for transportation purposes, and within the meaning of the tariffs.

Third, that even they admitted that the blended commodity was popularly known as gasoline, and

further admitted that even in their opinion "unfinished naphtha" would have been a more appropriate name for it than "unrefined naphtha"; that their conclusion that it nevertheless might properly be called "unrefined naphtha" was based on their contention, which the Government experts denied, that "blending" was a process of "refining."

Fourth, that they, therefore, denied that either the shipments of straight casinghead gasoline, or of casinghead gasoline blended with heavier naphtha, were gasoline, on two grounds:

(a) Because they claimed, what incidentally the Government's experts controverted, that neither the blended nor unblended commodity would satisfactorily operate an automobile engine, and therefore would not come within the limited definition which they gave the term gasoline.

(b) Because they claimed that it was necessary to further blend the shipments after their arrival at Port Arthur, with additional naphtha and with refinery gasoline, in order to meet the specifications of their customers. Indeed, their counsel, Mr. Swacker, flatly claimed that no commodity was gasoline unless it fulfilled the particular specifications of a particular customer.

Fifth, and what is most significant, that none of the defendant's experts had the temerity to attempt to justify the description of the shipments of unblended casinghead gasoline from Jenks as "unrefined naphtha." Indeed, in reading the testimony of defendant's experts, one is struck by their careful

avoidance of any separate and distinct reference to these shipments of straight casing head gasoline from Jenks, unblended with any other commodity. The defendant obviously recognized the improbability of persuading the jury that these shipments, at any rate, could possibly be described as "unrefined naphtha," and, therefore, thought the less said about them the better. Moreover it will be noted that all the defendants' experts defined naphtha as a *distillate*, while casinghead gasoline is admittedly a *condensate*.

In short, it may fairly be said that the defendant's experts based their conclusions that the shipments were not gasoline, by arbitrarily limiting the meaning of that term to such "gasoline" as would satisfactorily operate an automobile engine, or fulfill the particular specifications of a particular customer, and by ignoring the definition given that term by the tariffs themselves, by the Interstate Commerce Commission for transportation purposes, by its admitted popular usage throughout the gasoline industry, and by its prior usage by the defendant itself.

Likewise, it is upon an equally arbitrary basis that the Circuit Court of Appeals chooses to disregard, and in certain respects even to misrepresent, the testimony of the Government's experts, and to adopt the conclusions of the defendant's experts in the face of the jury's findings and of the tariff provisions.

Before briefly abstracting the testimony of these expert witnesses, it will be helpful to give a short description of the nature and method of manufacture of casinghead gasoline; of the nature and method of manufacture of the naphtha shipped *northboun*

from Port Arthur to Kiefer and Drumright for blending with this casinghead gasoline for the *south-bound* shipments to Port Arthur, covered by the indictment and of the subsequent further blending at Port Arthur, to comply with such specifications as to gravity and volatility as particular customers of the defendant might require. The facts stated in this connection are drawn almost entirely from the testimony of the defendant's experts, or of the defendant's officials and employees who were called as witnesses by the Government, and are practically undisputed.

**NATURE AND METHOD OF MANUFACTURE OF CASING-  
HEAD GASOLINE**

Casinghead gasoline is a condensate of natural gas obtained from oil wells, and drawn off separately from the oil through a separate tube or "casing," from which it gets its name. (Rec. 186.) The casinghead gas is passed through a compressor and compressed into gasoline. (Rec. 238.) Ordinarily there are no impurities in it, except accidentally some water or crude oil might come through the gas line. As a precaution against this, the gas, before being passed through the compressor, is passed through so-called scrubbing or meter tanks, which remove any foreign substance. (Rec. 236, 552.) The defendant's admitted that their plants at Kiefer, Drumright, and Jenks used this compression method, and were casinghead gasoline plants only. (Rec. 179, 180.)

The vapor tension of the casinghead gasoline as it came from the compressor varied from 20 to 30



pounds, the specific gravity from 88 to 90, and its color was generally water white. (Rec. 242, 554.) It is invariably shipped in clean cars. X

The casinghead gasoline from Jenks was shipped to port Arthur unblended. (Rec. 207, 554.) Its vapor tension was reduced by "weathering" (exposure to the air, Rec. 213) to or below the maximum of 10 pounds, required by the Western Classification and the Commission's Regulations for the Transportation of Dangerous Articles, and varied from 7 to  $8\frac{1}{2}$  pounds (Rec. 600), its specific gravity being reduced to 77 to 80 (Rec. 599). Slater, another of the defendant's officials, says 75 to 85 (Rec. 639).

The casinghead gasoline from Kiefer and Drumright before being shipped *southbound* to Port Arthur, was blended with heavy naphtha shipped *northbound* from Port Arthur to those points for the purpose. The Kiefer blend was about  $66\frac{2}{3}$  per cent gasoline and  $33\frac{1}{3}$  per cent naphtha. The Drumright blend was about 65 per cent gasoline, and 35 per cent naphtha. The specific gravity of the blended commodity varied from about 77 to 80. (Rec. 594 to 596.) Slater says 72 to 85. (Rec. 640.) The vapor tension was about 8 pounds (Rec. 594) and the color test about 24 to 25 (Rec. 595), 25 being perfectly white, "like distilled water." (Rec. 364.)

It was this weathered unblended casinghead gasoline from Jenks, and the blended casinghead gasoline from Drumright and Kiefer, shipped southbound to Port Arthur, which was shipped by the defendant under the name of "unrefined naphtha." X

It is the Government's contention that neither the weathered casinghead gasoline, which was itself, as has been seen, a pure and refined product, nor such casinghead gasoline blended with heavier naphtha, which it will now be shown was also a refined product, could properly be described as "unrefined naphtha."

**NATURE AND METHOD OF MANUFACTURE OF NAPHTHA SHIPPED NORTHBOUND FROM PORT ARTHUR TO KIEFER AND DRUMRIGHT FOR BLENDING WITH CASINGHEAD GASOLINE**

The defendant admits (Rec. 473, 474) that the naphtha shipped northbound from its refinery at Port Arthur for blending with the casinghead gasoline at its subsidiary's casinghead gasoline plants at Kiefer and Drumright, was painter's naphtha, or of a similar grade (Rec. 474). The gravity is shown as from 53 to 54. (Rec. 243.) Defendant's counsel claimed, however, that it was not "a refined product suitable for gasoline." (Rec. 474.)

Just what this statement of defendant's counsel meant is not clear. If by it he meant that this painter's naphtha was not itself gasoline, the Government entirely agrees with him. If, however, he means that it was not a refined product suitable for blending to make gasoline, he is contradicted by Pritchard, Superintendent of the defendant's refinery at Port Arthur, who testified (Rec. 586) that additional amounts of this same painter's naphtha were used at Port Arthur itself for the final blending, to produce what the defendant itself admits was gasoline. This was also testified to by defendant's

Assistant Superintendent Slater. (Rec. 657, 658.) However, defendant's counsel himself, in connection with a previous refusal to admit that this north-bound naphtha was refined (Rec. 467) stated:

We will admit that it was a treated naphtha, and would be a sufficiently treated naphtha for some purposes, and we are perfectly willing to admit the exact character of it.

Curiously enough, the record does not show exactly where painter's naphtha stands relatively in the list of various naphthas, but the Government's expert Dykeman, testified that it underwent three refinery processes (Rec. 879), and that the putting together of two refined products, such as painter's naphtha and casinghead gasoline, could not produce an unrefined product which would justify a designation such as "unrefined naphtha."

**FURTHER BLENDING AT PORT ARTHUR TO MEET PARTICULAR SPECIFICATIONS OF DEFENDANT'S CUSTOMERS**

The defendant's Assistant Superintendent at Port Arthur, Slater, testified (Rec. 660) that the blended shipments from Kiefer and Drumright were never used at Port Arthur to fill orders for gasoline, without further blending with more painter's naphtha, and with refinery gasoline. This also was the testimony of defendant's Superintendent Pritchard. Slater testified (Rec. 659) that the proportion of casinghead gasoline in the product finally sold from Port Arthur to their customers as gasoline, was from 5 to 12 per cent. He was unable, however, to state the proportion of refinery gasoline and heavy naph-

tha, saying that all the ingredients varied to meet various specifications. Miller, an expert witness for defendants, stated that the casinghead would run from 3 to 10 per cent of the final product. (Rec. 740.) Burrell, another expert for the defendant, says 5 per cent to 30 per cent; generally 25 per cent to 30 per cent. (Rec. 701.) On the other hand, Millard, who had been Assistant Superintendent and Superintendent of the Gypsy Oil Company's casinghead gasoline plant at Kiefer, testified that the blended casinghead was marketed direct from Kiefer to customers at various places, including Saint Paul and Pittsburgh, as gasoline. (Rec. 555.) This was from 1914 to 1916, and the only difference, if any, in that product and what was shipped to Port Arthur from Kiefer, was in the different gravities that might be blended to meet the particular specifications of their customers.

It also appeared that the shipments from Kiefer, Drumright, and Jenks went directly into the gasoline tanks at defendant's refinery at Port Arthur, and that the defendant had no tank designated for "unrefined naphtha." (Rec. 656.)

#### **ADMISSIONS OF DEFENDANT'S EXPERT WITNESSES**

SLATER, Assistant Superintendent, Gulf Refining Company, Port Arthur (Rec. 630 to 667):<sup>1</sup>

Says correct name of blended casinghead gasoline as received from Kiefer "unrefined naphtha," but admits "we call it usually Kiefer gas." (Rec. 665.)

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<sup>1</sup> Pages of record between which each expert's testimony will be found, are given immediately following each expert's name.

Admits to court that better designation for blended Kiefer casinghead gasoline would be "unfinished naphtha," rather than "unrefined naphtha." (Rec. 657.)

Admits that "may be" Kiefer casinghead gasoline is pumped directly into gasoline storage tank at Port Arthur. (Rec. 658.)

Admits doesn't know whether product similar to Kiefer casinghead gasoline is marketed as gasoline. (Rec. 663.)

Admits knows of no book where term "unrefined naphtha" is applied to casinghead gasoline. (Rec. 662.)

TABER, Vice President, Gulf Refining Company (Rec. 667 to 685; 772 to 785):

"Naphtha" term generically applied to *distillates* from crude oil above a gravity of 52; that is above kerosene. (Rec. 671.)

Term "gasoline" originally confined to that of 76 to 80 gravity used for making light, and continued so to be used until automobiles came along. (Rec. 672.) There wasn't enough of this kind of gasoline to supply them, so they had to go to the naphtha to get something heavier. Their carburetors, at that time, had been made to use this very light material, and so they had to change their carburetors to burn the heavier material, and they called that gasoline. That isn't the proper name for it from the technical standpoint. The automobile business has run away with the crude oil business, particularly with the terminology of the business. The automobile business dominates the

names used in the gasoline business, and they call the product all sorts of names. Some call it benzine because they talk about benzine buggies; some call it naphtha; some gasoline, and some use the name gas for short. We, as refiners, have to know all those names. They call it naphtha when used in a launch. (Rec. 673.)

*Gasoline in the strict technical sense of the word, is a product which is substantially 76 to 80 gravity—a refined distillate from petroleum which is suitable for use in carbureting air for making gas suitable for burning in private dwellings. That is one of the articles of commerce known as gasoline. Now there are other articles, and that has been developed by the automobile business. For that purpose we will say that gasoline is a product, a combination of products of naphtha produced from crude oil, natural gas, casinghead gas, and other sources, which are made suitable for use in the general run of automobiles which use suction carburetors. It has to be suitable, however, for such use. Casinghead gasoline produced at*

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NOTE.—Witness here uses refining to mean the further blending performed at Port Arthur. He says blending is refining and gives the following illustration (Rec. 681):

“Sterling silver is 92½ per cent pure silver and 7 per cent copper. Now, if you have a mixture, if you have 100 pounds of what is found to be sterling silver and 7½ per cent copper, there is no extraneous matter in it, but if you happen to have 100 pounds of mixture, put out to be sterling silver, and found 8 pounds of copper, then you would have some extraneous matter. Now there would be two ways of refining that copper. One would be to take so much out of that copper so what was in there would not be more than 7½ part of the hundredth of the whole; or you could add enough pure silver to it so there would not be more than the proportion of 7½, and when you do it either way you will comply with the specifications, and either would be refining

*Kiefer, Drumright, and Jenks doesn't fulfill either of these specifications for gasoline. I do not consider it gasoline. I consider it unrefined naphtha because it requires refining to fit it for the market. (Rec. 678.)*

*Admits that casinghead gasoline is called by other people, blended gasoline, but says that defendant calls it "unrefined naphtha." (Rec. 683.)*

*Says "unrefined naphtha" is perfectly proper name for blended casinghead gasoline, but acknowledges he would prefer to call it "unfinished naphtha." (Rec. 684, 685.)*

*Furnishes bibliography of petroleum products. (Rec. 772 to 785.) Out of all the books mentioned, he admits only two mention "unrefined naphtha." He quotes only one of these two—Bacon & Hamor. (Rec. 784) as saying:*

*"Naphtha distillate (Unrefined Naphtha) as those fractions which boil up to 150 degrees C. under atmospheric pressure."*

*Witness says this definition comprehends casinghead gasoline.*

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*it. Either taking out a part of the impurity or adding so much of a pure material to make up the specifications."*

*The witness's false analogy shows exactly why blending of casinghead gasoline with heavier naphtha and refinery gasoline at Port Arthur, is not refining. The casinghead gasoline is a more volatile and higher grade commodity. See testimony of defendant's expert Burrell. (Rec. 707.) The object of blending at Port Arthur is merely to reduce its volatility. A correct analogy, therefore, would have been a case where it was found that 100 pounds of supposed sterling silver, contained 93 pounds pure silver (casinghead gasoline), and 7 pounds of copper (less volatile naphthas). In order not to exceed sterling silver specifications, it would be necessary to get rid of the extra half pound of pure silver and replace it with half a pound of copper. This could be done either by taking out some of the silver, or adding more copper in the proper ratios. But in either event, it would not be a process of "refining," but of coarsening or debasing, not "refining."*



Obviously this is inaccurate, as casinghead gasoline is not a "naphtha distillate," but if naphtha at all, it is a naphtha "condensate."

BURRELL, Superintendent of two refining companies in no way related to defendant (Rec. 685 to 708):

Says blending is a refining process. (Rec. 689.)

Technical definition of naphtha is light *distillate* which comes off crude oil in the process of refining down to kerosene, sometimes including kerosene. This generic definition is specifically used to mean 48 to 60 gravity used to mix with natural gas gasoline in the art of blending. Also to designate painter's naphtha which has a gravity of 52 to 54.

Defines gasoline "as a liquid inflammable substance or mixture of hydrocarbons *suitable for use in an automobile to-day.*" (Rec. 691.)

Admits casinghead gasoline already partially refined in ground. (Rec. 693.)

Says blended shipments of casinghead gasoline from Kiefer and Drumright, and unblended shipments from Jenks are not gasoline, *but admits popularly called gasoline*, and that he has called them so himself, "but material I am talking about is not gasoline, and does not come under that category until properly prepared for market."

"Unrefined naphtha" is proper name for casinghead gasoline blended or unblended, *but would prefer designation "unfinished naphtha."* "Gasoline" is wrong name. (Rec. 694.) Would really like word "condensate" in speaking of natural gas gasoline.

Neither raw casinghead gasoline nor Kiefer blended casinghead gasoline will in general run a Packard or a Dodge car, and, "therefore, is not gasoline in my definition of the term." (Rec. 695.)

Not gasoline because too volatile. Similar in this respect to "still" gasoline. (Rec. 700.)

Defines "refining" as "preparation of raw material for market." Says general practice is to put 25 to 30 per cent casinghead gasoline into gasoline. Some refineries put 5, some 10, some 25, and some 30. (Rec. 701.)

First admits blending is essentially mixing (Rec. 704), and then says it is not merely mixing. (Rec. 705.)

*Admits blending does not remove any impurities.*

Admits never used term "unrefined naphtha" in any book written by him. Admits called blended material in a book written by him "blended casinghead gasoline." (Rec. 706.)

Admits that he wrote in same book:

The natural gas gasoline is not only valuable because of the product itself, but because it is of very high grade, so high in fact that it is not economical to use it alone, but so it is mixed with low grade refinery naphtha, and the so-called cracked gasoline, a great deal of which is being made at the present time.

Witness then says (Rec. 707, 708):

I will tell what I mean by the term "high grade." Automobile makers have changed their carburetors as fuel became scarcer and scarcer, until to-day that carburetor is made

to suit a much more lower grade fuel than the high grade fuel of a few years ago; so to-day the low grade fuel is a high grade fuel, because that high grade fuel of a few years ago will not operate an automobile satisfactory.  
\* \* \* High grade was used in the sense of high in gravity. High grade really conveys a wrong impression unless one is familiar with casinghead gasoline.

Q. So that in this case according to your investigation and knowledge of the situation, is it not a fact what is refined if anything, is the low grade refinery product at Port Arthur?

A. I certainly would not admit that, one helps the other. You have each to help the other. The casinghead gasoline is made available for use by motor trade and the heavy distillate is made available each helping the other. One supplies the upper range in the boiling point, that is the naphtha, and the other, the casinghead gasoline, supplies the lower range, in other words makes an automobile engine easier to start—One helps the other.

Q. Now, Mr. Burrell, is it true that what is shipped is gasoline of a very high grade, but may be properly called unrefined naphtha?

A. I would not say that. You are speaking of high grade gasoline. The material which you call high grade gasoline is really selling to-day in Oklahoma for four or five cents less than the regular automobile gasoline.

Q. Has that been just in the last few months?

A. Yes, sir.

Q. Now, wasn't that due to a particular transaction in the oil trade?

A. I don't know what caused it.

Q. Isn't that due to the fact that the Standard Oil Company made some change in its internal policy?

A. I had so heard.

\* \* \* \* \*

A. I will admit that this natural gas gasoline is a very fine material; it has helped out the automobile industry; it is very valuable but casinghead gasoline helps the naphtha just as much as the naphtha helps the other. They are invaluable to each other—You can not say that this material is not high grade (I don't mean it is low grade). It is a very valuable commodity.

Q. Now in what respect is it unrefined?

A. It is not ready for the market.

DOCTOR GARNER, Chemical Engineer (Rec. 708 to 715):

"Naphtha" generic name for everything above kerosene. Used specifically also in connection with certain grades of marketable products like naphtha "a," naphtha "b," naphtha "c," or painter's naphtha or stove naphtha, or solvent naphtha. These may be either refined or unrefined articles.

Gasoline in the strict sense must be that low boiling portion of naphtha having a gravity of 76, possibly to 82, and usable for purposes of illumination.

Definition of it as article of commerce would require witness to divide it into a number of component parts.

Witness fails to make such division but in answer to his counsel's question:

"Is gasoline a term applicable to product for use for vaporization purposes?"

"A. It is."

Also that as used commercially it is a finished product as distinguished from an unfinished product.

*Does not consider anything may be properly called gasoline that could not be used for vaporization purposes, such as running a car or gasoline stove.*

Says Kiefer, Jenks and Drumright products are not gasoline, but are "unrefined naphtha." (Rec. 711.)

Admits does not know whether casinghead gasoline is or is not the gasoline sold to-day to run gas machines.

Admits that there is a kind of gasoline called "export gasoline," which is made from casinghead gasoline blended.

Q. The gasoline to be used in a motor car is not the only kind of gasoline, is it?

A. In the common acceptation of the term, I believe that of 96 per cent of all the material used and called gasoline is used in internal combustion engines with suction carburetors.

Q. The term, however, embraces many kinds of gasoline, does it not?

A. Many kinds of gasoline—if you will say specifications of gasoline. (Rec. 712.)

Says in his definition of gasoline as composed of lowest fractions and of a gravity ranging from 76 to 82, casinghead gasoline would still not be gasoline

if it had such boiling points and gravity. Would not give same curves, and varies in amounts of constituent hydro-carbons. Says casinghead gasoline is unrefined.

SCHOCK, Chemical Engineer (Rec. 716 to 734):

The material used to-day under the word gasoline, is not identical with the material called gasoline years ago. The material now used in automobiles would then probably have been called naphtha. Gasoline originally was used in gasoline stoves, and the not differ exceedingly from the present gasoline, but in another way it does. The quality and the volatility has been steadily lowered in order to meet the greater demand. Witness won't say that twenty years ago gasoline was a different material but it was a gasoline that had a lower boiling point; was more volatile as a whole than the present gasoline. (Rec. 719.)

Gasoline was always used to be vaporized. Can not be defined in a word. It is material derived from petroleum. It is a liquid volatile, inflammable, but so made up in such proportion that a part only will volatilize when air is going through it as is done in the ordinary automobile carburetor.

In distilling crude oil the first portions that come off collectively are known as naphtha. Naphtha designates any volatile inflammable liquid hydro-carbon mixtures with a prefix added for the name of the naphtha. (Rec. 720.) The term naphtha includes any gasoline, but all naphthas are not necessarily gasoline.

Shipments from Kiefer, Drumright, and Jenks to Port Arthur are not gasoline, and appropriately described as "unrefined naphtha." (Rec. 721.)

Witness says blending is an essential operation in at least two, and probably more commodities obtained from a refinery, but unlike defendant's previous witnesses, this witness does not say that blending is refining. (Rec. 727.)

MILLER, Consulting Engineer (Rec. 735 to 747):

"Still" gasoline and casinghead gasoline are not finished gasolines, and are substantially similar. (Rec. 737.) Both must be blended with refinery gasoline to be used in automobile motors.

*Defines gasoline as being generally that fraction of crude petroleum or similar products lying within the range of boiling point and other necessary physical tests, which will satisfactorily and economically operate an internal combustion motor.* Kiefer, Drumright and Jenks shipments are not gasoline as will not do this. Blending necessary. (Rec. 738.)

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NOTE.—The Director General will not attempt in this brief, either in the case of these witnesses, nor of other expert witnesses for the defendant, or for the Government, to abstract their testimony as to whether the "weathered" casinghead gasoline shipped from Jenks, or the blended casinghead gasoline shipped from Drumright and Kiefer, could be used to operate an automobile. The testimony of the witnesses was in hopeless conflict, both as to theory, and as to the result of certain actual tests made during the trial. It is to be observed, however, that the defendant's witnesses who denied that it could be so used, did not attempt in the tests, to readjust the carburetors, or to say that they could not be readjusted. In any event, the testimony of neither the defendant's nor the Government's witnesses, is abstracted, because the Government considers it in no way decisive of the question as to whether or not the casinghead gasoline shipped from Keifer, Drumright and Jenks, to Port Arthur, was gasoline, *within the meaning of the tariffs.*



Says at Cosden and other refineries he has observed only three to five per cent of casinghead gasoline is used in final blending.

The word "naphtha" is used in the refining business generally as the generic term of that fraction obtained by the *distillation* of the crude oil before the product kerosene is reached. It is also used more specifically to cover the heavier blending materials which are used in connection with the compression plants in some parts of the country. It is also extended by the individual manufacturer even farther than that. The Tide Water Oil Company, for instance, applies the name "naphtha" from the beginning of the process to the finished product itself which others call gasoline. (Rec. 740.) Blending is a process of refining.

Jenks, Kiefer, and Drumright shipments properly designated by name "unrefined naphtha," but "*unfinished naphtha*," or *unfinished gasoline blend*, or *unfinished casinghead*, or *unrefined casinghead blend* would be more descriptive.

"Unrefined naphtha" will embrace any naphtha product which is not being completely refined ready for use. There is a great deal of confusion and misuse of names within refineries, of products. Each Superintendent of refineries, and a good many employees, have a great many ideas about nomenclature. (Rec. 741.) As used, termed gasoline in a more or less limited sense in testimony.

Q. Take, for example, a quart of gasoline which is produced by a still-run process?

Its color, normal, when it is properly prepared, its gravity and all of the other characteristics meeting with the specifications in the refinery but do not meet the specifications of the sale, is it gasoline when it is produced from the refinery or is it only gasoline when it comes up to these particular specifications?

A. It is my practice in the refinery to call such products naphtha, although finished—although unrefined or unfinished until they meet gasoline specifications, until so blended and so put through the process to meet the specifications involved in the sale of the gasoline in question.

Q. Suppose they did not exactly meet all of the specifications, wouldn't they inherently be gasolined just the same?

A. They would inherently be substantially the same product, but I would not call it gasoline in the ordinary practice; in my experience with the Pierce oil plant, we called everything naphtha with the various qualities until it reached the stage when we applied, when it reached the finished stage and ready for shipment. The company's trade name for output number 2 was pennant gasoline, I don't claim the mere calling of it naphtha would—at one time and gasoline at another time inherently change the characteristic of the product. (Rec. 744.)

*Admits never heard casinghead gasoline called "unrefined naphtha."* More usually referred to as compression blend or casinghead naphtha blend. In a generic sense, "unrefined naphtha" would be more

proper than "unrefined gasoline," but neither of the two terms in witness's opinion are quite descriptive enough for general refinery usage. (Rec. 745.)

*"Unrefined naphtha" is not a term generally applied to casinghead gasoline.* (Rec. 746.)

BACON, one of the authors of Bacon & Hamor (Rec. 748 to 772):

Material now called gasoline not manufactured before automobiles came into use. (Rec. 749.)

Shipments from Kiefer, Jenks and Drumright to Port Arthur not properly called gasoline. *"My definition for gasoline would be this, gasoline is a mixture of combustible liquids, a finished product that will satisfactorily run a motor car."* (Rec. 750.)

Inclined to believe that if anything will come along to-morrow that will properly run an automobile, and it was derived in a large part from petroleum, that that material would properly be called gasoline \* \* \*

The situation is so desperate at the present time in regard to supplying the demands of automobile users, that every refining company is reaching out for material which can possibly go into gasoline, and I haven't any doubt that in the next three or four years, possibly sooner, new material will come in, and if those materials go in with petroleum distillatex, I believe that that product is correctly called gasoline. (Rec. 750, 751.)

Doesn't believe that terms, gasoline, kerosene, lubricating oils, which includes the three principal products of petroleum, have ever been correctly applied, except to the finished product.

Regards name "unrefined naphtha" as a proper designation for this material. Not the most descriptive designation, but a proper one. Comprehends more than merely casinghead gasoline. Includes any naphtha that has not been brought to a finished state. Blending is part of refining. (Rec. 764.) Enables refinery by blending to use wider cut of other petroleums.

Q. You have a material which you call casinghead gasoline. It is somewhat too volatile, to lower the volatility you add naphtha to it, or some other petroleum product, and you get what you admit would be gasoline; is that correct?

A. I admit that it is not gasoline.

Q. But you mean the final blended product is not gasoline?

A. *If it is blended in such a way as to meet the specifications or leaving the specifications out of consideration, if it is blended in such a way that it will run a motor car, I call it gasoline; if not I don't call it gasoline.*

Q. If I understand you correctly, what is universally known as casinghead gasoline, you call unrefined naphtha, is that correct?

A. That is correct. I don't mean it is universally known as casinghead gasoline.

Q. Do you show that in your book?

A. I have no doubt that it is called casinghead gasoline.

Q. Didn't you just call it gasoline?

A. I think probably because I have always assumed the word casinghead gasoline is really a compound word, because I have always known

that casinghead gasoline was a different type of material from what we commonly call gasoline; perhaps I can illustrate what I have in mind better by giving an illustration \* \* \*

Q. When this product which you in your book call gasoline is somewhat too volatile to denominate as gasoline it can be properly called unrefined naphtha, is that correct?

A. Yes, sir.

Q. And you then add a little more of the same material to get it back to gasoline?

A. I did not say add a little more, but add the proper amount of the same material and other materials, and then you can bring it to gasoline.

Q. Now, as a matter of fact, is casinghead gasoline unrefined in any respect, or is it not refined below the surface of the earth by a natural process?

A. I consider it unrefined because I consider any product that comes out of the ground unrefined. \* \* \*

Q. You have a false assumption, because the gasoline does not come out, but the gas. \* \* \*

Q. Now after this gasoline is liquefied and compressed into gasoline, is it not a fact that the liquid is a clear white color—is it not a fact that it has all the appearances of a high state of refined gasoline?

A. The product that comes out of the ground and as made by manufacture, as a general rule, is of a good color; that is, a color that approaches a water-white color, but I don't consider that has anything to do with

whether it is refined or not. I call the substance refined when it is up to the standard; it is not refined. \* \* \*

Q. I will ask you if it is not a fact a great many things may be in a high state of refinement and yet not be such as to be marketable?

A. Yes. (Rec. 769, 770.)

Can't, offhand, name a technical word that designates casinghead gasoline as "unrefined naphtha." (Rec. 772.)

**TESTIMONY OF EXPERT WITNESSES FOR GOVERNMENT**

HAIGH (Rec. 394-408), Superintendent Ajax Casinghead gasoline plant, located at Jenks, says casinghead gasoline is gasoline (Rec. 395) and that blend of two-thirds casinghead gasoline and one-third naphtha is gasoline.

Designates blend when vapor pressure is less than 10 pounds as gasoline. (Rec. 401.)

Calls unblended casinghead "raw gasoline," and after blending with naphtha calls it gasoline. (Rec. 402.)

LEAGUE, Inspector of Bureau of Explosives (Rec. 408-455), after testifying had inspected all casinghead gasoline plants in the country, and after naming numerous ones that called product "gasoline" and described it as such for shipping, defendant's counsel admitted (Rec. 427) that witness would testify to same effect as to all plants inspected by him.

Witness says liquified petroleum gas, even above 10 pounds pressure, called "gasoline" around the plants.

Q. (By Mr. SWACKER.) Now, referring to it in the vicinity of these plants, I understood you to say a few moments ago that notwithstanding the description required by these rules of liquified petroleum gas when the vapor tension exceeded 10 pounds that no distinction was made by the producer but they called it gasoline.

A. Yes, sir.

Q. Now, then, that name liquified petroleum gas is a very proper name of the commodity.

A. I should think so.

Q. And might with entire accuracy be applied to the commodity even though the vapor tension did not exceed ten pounds. Is that true?

A. *Aside from the shipping.* (Rec. 445-446.)

Has heard blended commodity called by various names according to blending material as such, "blended gasoline," "kerosene blended," "gas oil blended." (Rec. 446.)

Q. Now you state shipped by the Gypsy was practically of the same character as that shipped by the other people from whom you got your general information that it was called gasoline. And you say practically—when you say practically all the same, you embrace within that all this wide variety of blends; is that true?

A. *Of the naphtha blends.* Yes. (Rec. 447.)

Only people he has ever heard call blend of casing-head gasoline and naphtha "unrefined naphtha" are the Gypsy Oil Company and its employees. (Rec. 448.)



Witness says has never seen blended casinghead gasoline shipped to any other refinery than defendants as "unrefined naphtha." (Rec. 451.)

In speaking of "raw casinghead gasoline" meant unblended—did not mean to intimate that it was in a crude or unrefined state. (Rec. 451.)

SCOTT, Inspector of Bureau of Explosives. (Rec. 455-461.)

Has inspected all casinghead gasoline plants in the State of Oklahoma. (Rec. 456.)

Designates kind of gasoline by method of production, that is, calls casinghead blend gasoline "casinghead gasoline"; calls gasoline from refinery "refinery gasoline." All other casinghead gasoline plants called blended shipments "gasoline." (Rec. 461.)

BARNHART, of the Franchot plant, says that they call blended casinghead gasoline "gasoline," and that they shipped it under that name. (Rec. 462-3.)

PRITCHARD, Superintendent Gulf Refining Company, Port Arthur, (called as witness for Government.) (Rec. 576-603.)

Admits referred to still gas as "high gravity gasoline" but refuses to admit that Kiefer casinghead gasoline was "high gravity gasoline."

Does not consider anything gasoline except what meets specifications. (Rec. 601.)

The COURT. *Well, would it be high gravity gasoline as generally termed in the refinery world?*

A. *Yes, sir.*

Q. (By Mr. SWACKER). But it isn't called gasoline. Is that correct?

A. No, not what I term——

The COURT. What you term "gasoline" is when it is finished in accordance with the specifications of the purchaser?

A. Yes, sir.

The COURT. So you don't call anything gasoline until it meets the specifications of the man that buys it for the market?

A. Yes, sir.

The COURT. Then there would be different kinds of gasoline, wouldn't there?

A. Yes, sir.

The COURT. One man would have one specification and another man another. Then how would you distinguish the different kinds of gasoline of that kind?

A. The different specifications call for at different billing points.

The COURT. What would you call it?

A. Might call it South Carolina gasoline, motor gasoline, what we used to call Bohme gasoline.

Q. So now, if this commodity that was shipped from Kiefer to Port Arthur, if it met the specifications of the customer for gasoline, then you would call that gasoline, if it did not, call for any further treatment to meet it?

A. If it did not require any further treatment to meet the specifications, it would be classified as gasoline.

Q. (By Mr. SWACKER.) Did you ever know of any of this material from Oklahoma that would meet any specifications for gasoline?

A. No; I did not.

The COURT. You mean the specifications of those that were ordering it? Is that what you mean? (Rec. 601-2.)

Defendant's counsel, Mr. Swacker, then attempted to lead witness into saying that he never knew any specifications which casinghead gasoline would meet, but witness answers "Nothing I would recommend it for."

NOTE.—Following colloquy occurred between Court and defendant's counsel, Mr. Swacker and Mr. Pritchard (Rec. 590):

The COURT. Here is a point in my mind. It says now unrefined. Now, unrefined is used in a sense that it is not a finished product. If it has been refined at all, can you say it is refined?

Mr. SWACKER. A product is unrefined only until it is refined, if there is any refining done in connection with it.


The COURT. He says the blending these two products here at Kiefer, that that is the process of refining:

Mr. SWACKER. Yes; partially.

The COURT. How can you say it is unrefined if it has gone through the process of refining?

Mr. SWACKER. We say anything is unrefined until it is refined; refining is the producing finished operation.

The COURT. Unrefined means there in the sense that it is not a finished product, and was that the intention?

 Mr. SWACKER. Absolutely. That is exactly what these letters show. That it is not finished.

Q. (Mr. PRITCHARD.) Is any of the product refined at the Port Arthur refinery a refined product until it is finished?

A. No; we don't consider it so.

The COURT. Now, you mean finished is when it is put in a state to meet the specifications of the purchaser?

A. Yes, sir.

The COURT. *And then anything might be gasoline as you term it gasoline for one purchaser and not gasoline for another purchaser, according to the specifications requested?*

A. Yes, sir.

DYKEMA, Consulting Petroleum Engineer (Rec. 822-842, 852-878).

Compression of casinghead gasoline not a refining process, but casinghead gasoline produced by compression is a refined product. (Rec. 833.)

It needs no purification but is used directly as made without any change in the majority of instances and in great bulk. It is already refined by natural process under ground and does not require any refining after it is compressed into liquid state. (Rec. 834.) Refined in earth by rock pressure, it causes practically the same process as distillation and refining of crude oil in still. Condensation of vapor from still and of casinghead gas from ground produces practically the same liquid.

Mr. SWACKER. *We are not disputing that it amounts to or is analogous to a refining process, but the question implies that that made it completely refined. We say it only makes a partial refining.* (Rec. 838.)

After compression casinghead gasoline is a refined product. (Rec. 839.) Casinghead gasoline is commonly known as gasoline in trade and in the scientific world. Never heard it called "unrefined naphtha." "Unrefined naphtha" not an appropriate name because misleading; implies it would need further refining and further purification, which is not the case. (Rec. 840.) Blending is mixing, not refining. There is no purification. It is never referred to as a refining process. (Rec. 841.)

Visited Gypsy Oil Company's plant at Kiefer in 1916. This product was casinghead gasoline, a water-white colorless liquid. It was not unrefined naphtha. (Rec. 852.)

Fact that product of Kiefer plant failed to meet certain specifications of customer of refining company does not say that product was not gasoline. Blending not refining, as it removes no impurities. (Rec. 853.)

Might be called a finishing process, from the standard of meeting certain specifications. Casinghead gasoline is blended for two purposes—one to make it less volatile for handling; the other to conserve the product. Blending is usually done at the casinghead gasoline plant and it is frequently marketed direct. (Rec. 854.)

Casinghead gasoline can be marketed without blending. (Rec. 855.)

Term "unrefined naphtha" is not used in scientific works as describing casinghead gasoline.

Visited every casinghead gasoline field in the country and never heard casinghead gasoline called "unrefined naphtha." (Rec. 856.)

Gasoline has no particular specifications. There may be a number of specifications. Judged by some specifications, casinghead gasoline might be called "unfinished gasoline." (Rec. 859.)

Statement in pamphlet prepared by witness that "gasoline produced by compression is also an undesirable fuel for gasoline engines" is true in many cases and untrue in others. A compression blend product can be made where it is perfectly satisfactory for fuel and in many cases is so made. (Rec. 863.)

Naphtha fractions, including gasoline, have for a long time been called by the generic name "naphtha," even including kerosene at times. Terms "gasoline" and "naphtha" can be used interchangeably with relation to the material with which gasoline as a finished product is made. Naphtha is a generic term and embraces all gasoline. Refining is a process of removing impurities. An already naturally pure product would be classed as a refined product.

"Q. (Mr. SWACKER.) If it is unnecessary to make a thing pure because it is pure, it would be unrefined though it would be pure.

A. You could make such a statement, make such a play of words." (Rec. 869.)

Casinghead gasoline is often called "raw casinghead." It is known and sold as gasoline. (Rec. 870.)

Very often in trade qualify the name "gasoline" by the kind or blend. A distillation test not neces-

sary to determine whether the commodity is gasoline. (Rec. 871.)

*"Unrefined Naphtha"* would mean lighter cuts of petroleum which needed further purification. This does not embrace casinghead gasoline. Might include still gas gasoline, because that could be called naphtha. (Sec. 872-3.)

Q. Now, in this distillation you claim takes place in the earth, if this is a part of the crude oil, as you claim it is, is it not a naphtha part?

A. In a broad sense I think it could be called a naphtha part, although that impression (description) is never given to any material in the earth. *Speaking of naphtha, naphtha is a refined product of naphtha distillation.* (Rec. 873.)

Where casinghead gasoline is blended with crude oil, it would need further refining. When blended with refined product, such as naphtha, it does not need further refining. *By term "unrefined naphtha" means a distillate which needs further refining, more usually called crude naphtha. Casinghead gasoline does not require further refining.* (Rec. 876.) Blending comes after the refining of the gasoline is completed. (Rec. 877.)

DEBARR, Vice President Oklahoma State University and Head Department of Chemistry (878-892).

Compression of casinghead gas produces casinghead gasoline. There are other kinds of gasoline—motor gasoline, casinghead gasoline, gas-machine gasoline, cleaners' gasoline.



Casinghead gasoline is not properly denominated "unrefined naphtha" because it is a pure refined product as it comes from the earth. The blending of casinghead gasoline with naphtha which has been given the usual three refinery processes does not produce "unrefined naphtha" because both products before put together are refined and putting two refined products together is not a process of refining. (Rec. 879.)

Could not take casinghead gasoline and blend it with refined naphtha and produce "unrefined naphtha" and then by addition of more of the same naphtha come back to gasoline. (Rec. 880.)

NOTE.—That this could be done would be the logic of the defendant's contention.

The fact that a particular gasoline is too volatile for use in an automobile does not justify calling that gasoline something else. Casinghead gasoline has practically the same chemical properties as refinery gasoline except in proportions. Even if recovery from casinghead gasoline was only 88 per cent, it would still be gasoline. Fact of failure to meet specifications of Gypsy-plant customer for gasoline would not justify calling it some other name. The quality in gasoline which makes the prompt starting of an automobile is the low-boiling constituents. (Rec. 880.) The more volatile a liquid, the easier it is to start an engine. The blending of casinghead gasoline with refined naphtha would not tend to refine the casinghead gasoline by the mere mixing of the two together. The fact that casinghead

gasoline is blended in order to lower its gravity does not justify calling casinghead gasoline "unrefined naphtha."

Does not know of any scientific work calling casinghead gasoline "unrefined naphtha," nor has he ever seen it used in trade journals. The only place he has seen the term used is in Bacon & Hamor, and then not under head of casinghead gasoline. (Rec. 881.) That book did not describe casinghead gasoline as "unrefined naphtha."

Says he has used casinghead gasoline to run a Paige seven-passenger sedan (Rec. 882). Too volatile for safe use in this manner generally. (Rec. 883.) Uses "refined in the sense of pure" and has no need of any purification for the purpose for which it is applied. (Rec. 885.)

Q. (By Mr. SWACKER.) But it is also necessary, in the manufacture of gasoline, even in the sense of pure, to do something to correct its boiling point?

A. Yes.

Q. And that is frequently done by a refinery?

A. Yes, and it is done without one. With or without one, either. (Rec. 885.)

NOTE.—Mr. Swacker's question shows that he confuses anything done at a refinery with "refining."

The lighter hydro-carbons are in larger proportion in the casinghead gasoline and the heavier constituents of hydro-carbons are in lesser amount, while the straight run gasoline might have a preponderance of the lighter or still going down, you have the

heavy constituents, but it will also have the lighter ones, and it sometimes and in some fields varies in this in the mid-continent field, just the same as casinghead gasoline.

Never heard of casinghead naphtha before witness heard it in this case.

Terms "naphtha" and "gasoline" are applied interchangeably with a great deal of confusion. (Rec. 888.) Principal difference between casinghead gasoline and refinery gasoline is in degree of preponderance of lighter against heavier hydro-carbons. Also test as to whether or not it would run a car. You can get down to a point when you would get such a preponderance of lighter hydro-carbons you could not run the car, and also where too heavy hydro-carbons it would not operate a car. (Rec. 889.)

Does not know whether Bureau of Mines or Bacon & Hamor originated term "unrefined naphtha."

NOTE.—Neither of these publications refers to casinghead gasoline under this name.

*Uses prefix in casinghead gasoline just as witness would speak of ordinary gasoline as motor gasoline, and gas machine gasoline as gas machine gasoline. Every gasoline has a special prefix. Gasoline as "commonly used" embraces casinghead gasoline.* (Rec. 890.)

Uses gasoline as a generic term. Uses plural when witness wants to speak of any particular kind of gasoline and specifies the prefix to indicate what kind of gasoline. Uses it as embracing finished or

perhaps slightly unfinished, but not unfinished for purpose for which it is to be used. (Rec. 891.)

Q. Now from your observation of the practice of refiners, I will ask you if it is not your practice to use the word refined as applicable to the products produced by the refineries?

A. Yes, sir; they do. I suspect, that is my opinion, that is what I have got from talking with them.

NOTE.—This again illustrates confusion in use of term "refined" by defendant's counsel. If defendant's counsel and refineries are correct in such use, it demonstrates among other things that the naphtha produced at defendant's refinery and shipped north-bound to Kiefer, Drumright, and Jenks was refined, though they contend it is "unrefined."

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As was stated, the foregoing does not pretend to be a comprehensive abstract of the testimony of either the defendant's or the Government's expert witnesses. It is sufficient to show, however, that, as already suggested, the defendant's experts justified their conclusions that the indicted shipments of blended and unblended casinghead gasoline were not gasoline, by arbitrarily confining their definition of that term to such gasoline as would satisfactorily operate an automobile engine; that they acknowledged that such blended and unblended commodities were popularly known as gasoline, and that they did not attempt to say that they were not gasoline within the meaning of the tariffs; that while they further

undertook to justify the application of the description "unrefined naphtha" to such shipments, they all admitted that at least a more descriptive term would have been "unfinished naphtha"; that they all defined naphtha in the generic sense as a *distillate*, while admitting that casinghead gasoline is a *condensate*; that, so far as they justified the use of "unrefined," they did it on the ground that further blending was necessary before such shipments could satisfactorily be used to operate automobile engines, or to fill the specifications of their customers, and that they considered "blending" a process of "refining"; that the court itself pointed out to them that calling a commodity "unrefined" meant it was not refined at all, and that their own counsel admitted that these shipments were, at least, "partially refined."

Certainly on these admissions, even without reference to the testimony of the defendant's experts, the court was entitled to let the question go to the jury, as to whether the shipments were gasoline or were "unrefined naphtha," and certainly there was at least substantial, if not conclusive, evidence to support the jury's finding that the shipments were gasoline, as charged in the indictments.

**(g) LETTERS OF DEFENDANT'S TRAFFIC MANAGER ELLIS DESCRIBING SHIPMENTS FROM KIEFER, DRUMRIGHT, AND JENKS AS "GASOLINE" IN ASKING REDUCTION OF RATES THEREON**

As already noted, the record contains certain letters from the defendant's traffic manager, Ellis, to the carrier's traffic officials, and certain replies by them, in

which both Ellis and they distinguish between the *northbound* shipments of "*naphtha*" and the *southbound* shipments of "*gasoline*."

Before referring to this Ellis correspondence, all of which precedes the period of indictment, it is desired to refer to Government Exhibit No. 75 (Rec. 1293) which was a letter written during the period of the indictment, February 10, 1917, from W. P. Donovan, General Superintendent of the Gypsy Oil Company, to P. T. McKirahan, General Agent of the A., T. & S. F. Railway Company. That letter had reference to the construction of loading racks at the defendant's casinghead gasoline plant at Drumright. It must be remembered that the defendant's counsel admitted (Rec. 179) that the only thing produced at its plants was casinghead gasoline. Throughout Mr. Donovan's letter, the racks are referred to as *gasoline* loading racks, and there are repeated references to the danger of handling *gasoline*, to the Bureau of Explosives' regulations for handling *gasoline*, and to *gasoline* shippers. This latter reference is immediately after a reference to a meeting of the "Executive committee of the Casinghead Gasoline Producers Association of America" "to discuss the shipping of casinghead gasoline from all angles." Mr. Donovan writes:

I feel that nearly all the *gasoline* shippers want to work in harmony with the railroads, etc.

Ellis, on January 18, 1914, wired the General Freight Agent, Kansas City Southern Railroad:

Requested Powers Docket rate 33¢ *Kiefer to Port Arthur* on *gasoline* for coastwise shipments. (Government Exhibit 90, Rec. 1366.)

On January 19, 1914, he wired the same party:

Exchange telegram relative 33-cent rate *Kiefer to Port Arthur*. In addition to this *southbound* rate we are figuring on moving about 50 cars per month or more of *naphtha* from *Port Arthur to Kiefer*. Have talked with Powers, St. Louis, long distance. \* \* \* Use your influence with other lines. (Government Exhibit 91, Rec. 1366.)

On January 19 he wrote Powers, Assistant General Freight Agent, St. Louis & San Francisco Railroad:

Referring to my long-distance telephone conversation this morning relative to docketing subject for San Antonio Meeting to-morrow rate 33 cents per hundred pounds *naphtha* from *Port Arthur* and *West Port Arthur* to *Kiefer, Okla.* We are figuring on from 50 to 75 cars of *naphtha* from *Port Arthur to Kiefer*. \* \* \* This *naphtha* is being moved from *Port Arthur to Kiefer* to be further refined at that point in connection with products now at *Kiefer*, and the *outbound shipments* will consist of *gasoline*, and for each car of *naphtha* moved into *Kiefer* there is approximately *two cars of gasoline* outbound. (Government Exhibit 92, Rec. 1367.)



On January 19, 1915, Christian, of the Sunset Central Lines, and Riley, of the Frisco Lines, wrote a joint letter to Ellis, reading in part as follows:

Referring to conversation yesterday morning concerning your application for rate of 15 cents on *naphtha from Port Arthur to Kiefer* as a traffic proposition.

You are advised that in view of this *commodity having passed beyond the crude state, it necessitated giving consideration to a reduction in the refined product.*

\* \* \* It has occurred to us that possibly you would not insist upon the *northbound* rates being disturbed for so small a distance, which we feel can have but one result, namely, the corresponding differences *southbound*. (Government Exhibit 93, Rec. 1368.)

NOTE.—(Apparently the three letters preceding the above should have been dated 1915 instead of 1914.)

On February 9, 1915, Ellis wrote Christian and Riley jointly:

\* \* \* "We have gone into this matter from all angles and am going to ask that you arrange for the publication of rate 40 cents from Port Arthur to Kiefer and 30 cents from Kiefer to Port Arthur. \* \* \* applying on *naphtha and gasoline.*" (Government Exhibit 88, Rec. 1365.)

On March 18, 1915, the Assistant Freight Traffic Manager of one of the lines wrote Ellis:

Referring to your joint letter of February 9, File 17-A, regarding publication of rate of 30 cents on *naphtha from Port Arthur, Tex., to*

*Kiefer, Okla.*, also the same rate in the reverse direction on gasoline. \* \* \* Your application has been given careful consideration and this is to advise that in view of the present conditions, that particular traffic not yielding sufficient revenue to pay the cost of operation, and the further fact that we are now endeavoring to increase rather than reduce rates, it will be impracticable to establish the rates at this time which you propose. (Government Exhibit 89, Rec. 1365, 1366.)

A copy of this letter was sent to Christian of the Sunset Central Lines.

On May 16, 1916, Ellis wrote Riley of the Frisco, with copies to Christian, Mitchell, and others:

All of our products from Port Arthur and North Port Arthur is an unfinished product and is passed through the refinery at Kiefer, and the products secured from this partial refining at Kiefer is an unrefined product and is transported to our Port Arthur refinery, and at that point further refined, and we are entitled to the unrefined rate as above. (Government Exhibit No. 97, Rec. 1376.)

On the same date Ellis wired Riley in part:

Will you please arrange through South Western Committee for publication 30-cent rate crude unfinished naphtha, Port Arthur and West Port Arthur to Kiefer and Kiefer to Port Arthur and West Port Arthur, etc. (Government Exhibit 98, Rec. 1377.)

On May 29, 1916, Powers of the Frisco wrote Mr. Ellis under the heading "*Gasoline—Rates on from Points in Oklahoma, Beaumont-Port Arthur District*":

Someone has suggested the cancellation of Item 2546-B, Supplement 40, SWL Tariff 26-T, offering as an excuse that the continuation of this figure may jeopardize rates of 27 and 29 cents, respectively, to this common point territory.

We shall be governed by your requirements in the premises as to the cancellation of Item 2546, and shall thank you to advise fully by return mail. (Government Exhibit 86, Rec. 1364.)

On June 5, 1916, Ellis wrote Powers in part:

We do not want this rate canceled as it is in daily use. We are now moving about 18 cars per week on this rate. (Government Exhibit 87, Rec. 1364.)

These letters clearly show that Ellis, having been refused a reduction by the carriers on the refined product when he correctly described his *southbound* shipments from Kiefer and Drumright as *gasoline*, and his *northbound* shipments as *naphtha*, conceived the idea of getting the reduction by confusing the character of the *northbound* shipments of *naphtha* with the *southbound* shipments of *gasoline*, under a common name of "crude unfinished naphtha," though both commodities were actually refined.

Moreover, a reference to the testimony of Powers (Rec. 533 to 539, 559 to 567) then Assistant General Freight Agent of the Frisco, and of Reilly (Rec. 567 to 576) will substantiate this.

Powers says (Rec. 563) that Ellis explained that he had a quantity of *low grade naphtha* at Port

*Arthur*, which it was desired to move to Kiefer, providing rates would be established that would warrant moving it up there, and working it through the Kiefer plant, and then moving it back to Port Arthur and then reworking it again and putting it on the market. *He said he was going to ship naphtha under the rate.* That it was a low-grade article to be shipped and treated and reshipped to Port Arthur to be further finished. (Rec. 565.)

Reilly says (Rec. 571) that in publishing a rate on crude naphtha, or unrefined naphtha, or unfinished naphtha, they put it in on the regular basis.

The COURT. Without any investigation of what it was?

A. Well, your Honor, that is impossible. We can not go out into the field. We don't know what is being shipped; we are hundreds of miles removed from the shipping point. (Rec. 571.)

He later says (Re. 57c4) that they had in mind the tariff rate that had been published in accordance with the Commission's decision in *National Refining Company v. M., K. & T. Ry.*, 23 I. C. C., page 527, involving rates from Oklahoma and Kansas to Baton Rouge.

A reference to the Commission's decision, however (Rec. 1378), will show that the commodity before the Commission was *a distillate from crude oil, and not a condensate from casing-head gas*, but that even so the Commission held *the gasoline rates legally applicable*, but merely unreasonable to the extent they exceeded

by two cents per hundred pounds the rates contemporaneously applicable on crude oil.

Yet it is of this decision that the Court of Appeals, in its opinion, declares (Rec. 1690):

In the light of the ruling of the Interstate Commerce Commission in the National Refining Company case, the rate on unrefined naphtha theretofore given by one of the carriers to Baton Rouge on a commodity *shown to be substantially the same as a condensate* of the Gypsy Company's plants, and the testimony in this case we think the insistence (that the conduct of the defendant was fraudulent) groundless, and must have been highly prejudicial.

In the light of Ellis's letters, and of his independent representations to the carriers, the Government is forced to repeat the charge that the conduct of the defendant was fraudulent in obtaining the publication of a rate on an anomalous commodity such as "unrefined naphtha," and in applying such a rate to casing-head gasoline, blended or unblended, without disclosing to the carriers the true nature of the commodity which was being shipped.

## II

### **None of the Alleged Errors Pointed Out by Circuit Court of Appeals Constitutes Reversible Error**

Reference has already been made under I (c) to the alleged error in the admission of evidence that both prior and subsequent to December 2, 1916, all other shippers shipped and described similar ship-

ments as gasoline, between these same points, and between other points as well. It should be again noted, however, that Mr. Swacker's admission (Rec. 427) in this respect, was a broad admission that League would so testify, and his subsequent misleading questions to League do not render this admission incompetent, but at most, go to its weight.

The alleged error in permitting evidence of erasures of the word "gasoline" from defendant's book records of shipments embraced by the indictment, it has been shown I (d), is due to some inexplicable ignoring upon the part of the Circuit Court of Appeals, of the defendant's admission that such erasures had been made by an employee of the defendant subsequent to an inspection of the books by an examiner of the Interstate Commerce Commission.

Likewise, it is shown under I (e) that there is not the slightest ground for the apparent conclusion of the Circuit Court of Appeals that evidence was inadmissible of the mutilation of the defendant's records by cutting off headings describing shipments embraced by the indictments as "gasoline."

It only remains to refer to the alleged error in the remarks of counsel for the defendant to the jury.

One of Government counsel made the following statement in his argument to the jury:

Mr. Tabor, the vice president of the company, quoted a list of works of about 150 perhaps, all told, on the subject of naphtha, but when it came to the subject of how many of those dealt with unrefined naphtha he was

crowded back to the conclusion that there was but one man and that he had been quoted by another, and one of those men was the employee, or rather came from the Mellon Institute in Pittsburgh. Now, what is this Mellon Institute? It is an institution that was founded by the Mellon family, of Pittsburgh. Mr. W. L. Mellon is president of the Gulf Oil Corporation. (Rec. 905.)

Counsel for defendant interposed objection to these remarks, and the trial court promptly admonished the jury not to consider them. The following is quoted from the record:

By Mr. DIGGS. If the court please, we except to that as no evidence in the record showing Mr. Mellon's connection with this company, W. L. Mellon, as president, the evidence being that the sworn evidence of George S. Davis was president.

By the COURT. Yes.

By Mr. GANN. He was president of the Gulf Oil Corporation.

By Mr. DIGGS. No evidence connecting him with this case at all.

By the COURT. Yes; there is not any evidence here, and the jury will not consider it. (Rec. 905-6.)

As to the other remarks of Government counsel which were assigned as error: No objection was interposed to these remarks at the time. (See pp. 906-908 of the record, in which the statements of Government counsel are quoted and showing that defendant made no objection at the time.) The record



shows that those statements were made on April 22, 1920. (Rec. 899.) On the morning of April 23, as one of Government counsel was about to resume his argument to the jury, the court interposed and made the following statement to the jury:

By the COURT. Wait a minute. Now, gentlemen of the jury, the defendant makes the following exception: The defendant excepts to the comment of the Government's counsel Gann and Chambers suggesting that the United States Government is pecuniarily affected by the matter under consideration, the defendant not being on trial on a charge of defrauding the United States, and also except to the comment of Government counsel Chambers upon the wealth of the defendant, such comment to the jury being highly improper and calculated to inflame, and defendant moves the court to instruct the jury to especially disregard such remarks. And defendant also excepts to the statement of Mr. Chambers to the jury charging the defendant had violated the safe transportation rules, such charge being contrary to the fact and admission of the Government and calculated to inflame; and defendant moves the court to especially instruct the jury regarding it. *Now, yesterday both sides on these points, to my mind, went outside the proper domain; as there was no objection, I permitted them to do that.* One side charged in the argument that the railroads, a part of the time when the country was at war, were under Federal control. Then the statement was made about what the result would be affecting members of the jury.

That has nothing to do with this case. Then the other side said how it affected their clients, how they could be made to refund in civil damages. So I admonish you to try the case according to the evidence. Hear the arguments of the attorneys, and when they are sound, if they are sound, that is for you to determine. If they do not confine themselves to the evidence in the case, that is for you to determine. The case is to be tried without fear or favor, without any regard as to how it affects people, but solely with a view of the weight of evidence as to be determined by the jury and as to the law to be given you. *The exception was made on the reconvening of court and after the argument had been made the previous day, but before the arguments were finally concluded.* (Italics ours; some slight changes have been made in the phraseology of the above statement as reported on pages 908 and 909 of the record to correct what are obviously stenographic errors.)

Special attention is called to the statement of the court that *both sides* went outside of the proper domain of argument. The Government counsel were not the only ones that offended in this regard. But the fact that the trial court especially admonished the jury concerning the remarks of counsel and instructed the jury to disregard such remarks cured any error that was made in this regard. And this seems to be especially true in this case, because the court admonished the jury a second time to disregard improper arguments. Just before the trial judge

made his general charge to the jury he admonished the jury as follows:

By the COURT. Gentlemen of the jury, before I begin the charge I will read to you what I said this morning. Now, on yesterday both sides on these points, to my mind, traveled outside of the domain of proper argument. I permitted them to do this, no objection being made by either side at the time. One side suggested in the argument that the railroads a part of the time were under Federal control, being in the hands of the Director General; in another statement that was made, that the result of the verdict might affect the interests of the taxpayers, including the interests of the jurors, or in substance that. That on the part of the defendant it was adverted to the fact that the defendant could be made to refund in a civil suit. The jury are admonished that the case is to be tried according to the evidence and the admissions. The jury are to hear the arguments of the attorneys and when they consider the arguments sound as relating to proved facts from the evidence admitted in the case and the admissions in open court before the jury, that is for them to determine. If the attorneys do not confine themselves to the evidence and admitted facts in the case, the jury should disregard such argument. The case is to be tried without fear or favor and without prejudice, and without any regard to the pecuniary effect upon anyone, but solely with a view of justice. As regards the safety

appliances, it is my understanding there is no contention of any violation of the same by the defendant in observing regulations prescribed as precautions to safety. That is for the purpose of reading that in the record and is an admonition to the jury. (Rec. 911.)

If any of the improper remarks made on either side tended to prejudice the jury, this double admonition by the court to the jury to disregard such remarks clearly would offset any such prejudice. It is well established that error of counsel made during the course of a long argument to the jury and after a long trial is not an incurable one, and if the error is objected to and the court instructs the jury to disregard such statements, the error is cured.

*United States v. Snyder*, 14 Fed. 544, 557.

*Carroll v. United States*, 154 Fed. 425, 430 (C. C. A. 9th Cir.).

*Ammerman v. United States*, 185 Fed. 1 (C. C. A. 8th Cir.).

### III

To permit either the Circuit Court of Appeals or the trial court on a new trial to disregard the positive requirements of the carrier's published tariffs and of the Commission's regulations for the transportation of dangerous articles, both of which require the description of these articles as gasoline, would be to vitiate the powers conferred upon the Interstate Commerce Commission under sections 1, 6, 13, and 15 of the Interstate Commerce Act, and to nullify the powers of the Government under the so-called Transportation of Explosives Act, Criminal Code, sections 233 to 236

The binding legal effect of the tariff provisions of the Western Classification requiring that—

Condensates of casinghead gas when reduced to a maximum vapor pressure of ten pounds per square inch and shipped either alone or blended with other petroleum products, be shipped and described as gasoline, casinghead gasoline, or casinghead naphtha,

has already been commented upon under I (a) of this brief.

The compelling evidentiary effect of such tariff provisions aside from their conclusive legal effect, was also there commented upon.

It will now be shown that to permit the Circuit Court of Appeals, or the trial court on new trial, to ignore these mandatory requirements not only of published tariffs, but of the Commission's Regulations for the Transportation of Dangerous Articles, would be to nullify both the Commission's powers under the Interstate Commerce Act, and the Government's powers under the Transportation of Explosives Act.

It should be understood that this is the inevitable effect of a failure to correct the opinion of the Circuit Court of Appeals herein, even though in this case the Government admitted that the Commission's Regulations for the Transportation of Dangerous Articles had been complied with, so far as the placarding of the cars embraced by the indictment was concerned. (Rec. 225, 226, 230.) Indeed evidence of a violation of the provisions of the Criminal Code for the Safe

Transportation of Explosives and Other Dangerous Articles, could not properly have been admitted under these indictments charging only violations of the criminal provisions of the Elkins Act.

What it is desired here to point out is that the logical and inevitable effect, however, of allowing the Circuit Court of Appeals, or any other court, to ignore the Commission's administrative regulations requiring the description of these shipments *for shipping purposes* as gasoline, casinghead gasoline, or casinghead naphtha, would be to put it in the power of a court, were the defendants indicted for violation of the Commission's Regulations for the Transportation of Dangerous Articles, to nullify collaterally the Commission's administrative regulations by undertaking to decide that, as matter of fact, the commodities were not gasoline. This the court might do because the court might believe, as here, on the testimony of expert witnesses, that the commodities did not come within the specifications of gasoline for some particular purpose, such as the operation of an automobile engine, or because, on like testimony, the court might differ with the Commission as to the proper chemical designation of such commodities, as distinguished from their designation for tariff and transportation purposes.

That administrative regulations made by Government departments under authority granted by Congress have the force of law, and that violation of them may subject the violator to criminal prosecution, is established by the case of *United States v.*

*Grimaud*, 220 U. S. 506. That Congress may legally delegate the power to make such administrative regulations to the Interstate Commerce Commission was decided in the case of *Interstate Commerce Commission v. Goodrich Transit Company*, 224 U. S. 194. That the Commission's administrative orders can not be set aside by the courts unless the Commission has exceeded the powers conferred upon it, or has acted arbitrarily in the absence of any evidence, has been repeatedly held by this court. See *Interstate Commerce Commission v. Union Pacific Railroad Co.*, 222 U. S. 541.

It must likewise be clear that the administrative powers of the Interstate Commerce Commission under Sections 1, 6, 13, and 15 of the Act to Regulate Commerce to prescribe just and reasonable rates and classifications and just and reasonable regulations and practices affecting the manner in which property tendered for transportation shall be marked and described, could be similarly nullified were the court to determine collaterally that, even though the Commission should prescribe the description of such commodities as those here shipped as gasoline, and so classify them for rate-making purposes, that such commodities were not in fact gasoline, in the opinion of the court. The situation in this respect is in no wise changed merely because the provisions of the Western Classification were, as tariff provisions, published by the carriers rather than prescribed by the Commission. As tariff provisions, as already shown under I (a), they were binding upon



the shippers, carriers, court, and Commission alike. Moreover, in this instance they had, in effect, been prescribed by the Commission, it obviously being impracticable to prescribe one description for such shipments under the Commission's Regulations for Transportation of Dangerous Articles, and another description for such shipments under the defendant's tariffs.

Indeed, this very situation illustrates the inherent harmfulness of the device used by the defendant to obtain a lower rate on its shipments of gasoline, than the rates published in the carrier's tariffs, by inducing the publication of a rate on "unrefined naphtha," and by describing its gasoline shipments as such. It is perfectly apparent that reduced rates were finally solicited on "unfinished" or "unrefined" naphtha, and published by the carriers, because the carriers did not wish to endanger the level of their gasoline rates generally, or to give all gasoline shippers the benefit of the reduction. The result is, as shown here, that the defendant by the simple device of obtaining the publication of lower rates on an anomalous commodity described as "unrefined naphtha," and by changing the description of its gasoline shipments to conform to this designation, obtained the sole benefit of the reduced rates, since all other shippers, as this record shows, continued to describe their similar shipments as gasoline, and to pay the higher charges legally applicable to that commodity.

## CONCLUSION

In conclusion, therefore, the Government submits that the judgment of the Circuit Court of Appeals should be reversed on the following grounds:

First, that that judgment is unlawful as a collateral attack on, and interference with, the lawful administrative rulings of the Interstate Commerce Commission.

Second, that the judgment ignores the mandatory and binding requirements of the carrier's published tariffs.

Third, that the alleged errors in the District Court upon which that judgment is based did not constitute reversible errors.

Fourth, because the conclusion of the Circuit Court of Appeals that the verdict of the jury was without support in the evidence was based upon an arbitrary disregard by the Circuit Court of Appeals of competent and legal evidence which warranted the jury's verdict; and

Fifth, because, since there was substantial evidence to support the jury's verdict found under appropriate instructions, the Circuit Court of Appeals was without jurisdiction to set that verdict aside merely because it might differ with the jury as to the conclusions to be drawn from that evidence.

Respectfully submitted.

JOHN F. FINERTY,  
*Attorney for James C. Davis,*  
*Director General of Railroads.*

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Office Supreme Court, U. S.

FILED

APR 27 1923

WM. R. STANSBURY  
CLERK

IN THE  
Supreme Court of the United States

NO. 994 40  
OCTOBER TERM, 1922.

UNITED STATES OF AMERICA,

*Petitioner,*

*vs.*

GULF REFINING COMPANY,

*Respondent.*

BRIEF FOR RESPONDENT IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI.

R. L. BATTS,  
FRANK M. SWACKER,  
*Attorneys for Respondent.*



IN THE  
SUPREME COURT OF THE UNITED STATES.

No.

OCTOBER TERM, 1922.

---

UNITED STATES OF AMERICA,  
*Petitioner,*

*vs.*

GULF REFINING COMPANY,  
*Respondent.*

---

**BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI.**

The respondent, Gulf Refining Company, respectfully submits the following opposition to the petition for writ of certiorari filed by United States of America, petitioner:

**I.**

This Court is without jurisdiction to grant the writ prayed for, because the case is a criminal case in which the judgment of the Circuit Court of Appeals is in favor of the defendant.

It is settled by this Court that in such case the writ of certiorari will not issue.

*United States v. Dickinson*, 213 U. S. 92.

*United States v. Evans*, 213 U. S. 297.

## II.

The indictment in this case charges the Gulf Refining Company with having received concessions and discriminations in rates on the shipment of gasoline from Oklahoma points to Texas in violation of Section 1 of the Elkins Act.

✓ No violation of any other provision of law was charged, and no reference was made in the indictment to the Transportation of Explosives Act or any other criminal provision except the one mentioned.

The evidence showed without contradiction that the defendant paid the rate regularly established by the railroad companies and filed with the Interstate Commerce Commission expressly to cover the movement of the traffic in question (*Record*, pp. 559-566, 567-574) under the name "unrefined naptha", which description originated with the carriers several years previously in deference to an order of the Commission directing them to establish a proper designation for a similar material then without other description, in a case with which respondent had nothing to do (*Record*, pp. 567-574, 694; *Ex. 99*; *Record*, pp. 1378-1383). It also shows that the representatives of the Bureau of Explosives knew of these shipments and of the name that was being used (*Record*, pp. 179-182, 408-416, 429-440).

All of the evidence showed that the product shipped as "unrefined naphtha" was naphtha, and that it was being shipped to Port Arthur not to be put upon the market as "gasoline" until blended or further processed. If the product was naphtha and had to be sent to the refinery to be prepared for market, it was of course properly called in the tariff "unrefined naphtha". The evidence (as held by the Circuit Court of Appeals) was that the product shipped was not proper for use as commercial "gasoline" and should not be so called. Indeed, it would be a criminal offense under the laws of Texas to ship or sell it as gasoline. It was even admitted by the Government's own expert witness that the material is properly embraced within the generic name "naphtha", and that it was in an unfinished state requiring correction of its boiling points before it would become the material known and sold as "gasoline" (*Record, pp. 883-892*).

A verdict for defendant should have been directed, as held by the Circuit Court of Appeals: that the general verdict against the defendant was induced by manifest errors of the trial is so clear that the application for writ of certiorari does not refer to any one of the issues tried in the District Court or argued in the Circuit Court of Appeals.

The statement on page 4 of the petition for the writ, to the effect that the rates on unrefined naphtha being open to respondent's competitors, if properly applicable, were nevertheless not used by the competitor, is misleading; because it fails to add that when respondent's competitor learned of the existence of the rate it filed suit to recover the overcharge exacted of it, evidence of which was of-



ferred by respondent on the trial, but excluded, and was assigned, argued and found as error by the Circuit Court of Appeals (284 Fed. Rep. 90, 102).

The next statement in the petition (page 4), that respondent's subsidiary continued to use the description "gasoline" in shipping to other points, is misleading; because it fails to state that there were no "unrefined naptha" rates available to such other points; thus rendering such evidence irrelevant, and its admission was assigned and argued as error, and so found by the Circuit Court of Appeals (284 Fed. Rep. 90, 102).

The application for the writ is based almost entirely on what is called the "remarkable" conduct of the Circuit Court of Appeals in not discussing defendant's assumed violation of a law for which it was not indicted. If the court had given consideration to a matter so entirely foreign to the case, it would perhaps have been content to refer to the Government's appendix to its brief in the Circuit Court of Appeals, wherein it is stated (p. 6):

"(The Government admits that the cars shipped from Jenks and Kiefer were properly placarded to comply with the regulations.)" with reference to explosives. "(Also that the bills of lading bore a stamp stating that the dome placards had been applied *throughout the period of time covered*). (The Government admits that the dome placards are necessary only when the tank cars contain any admixture of casinghead gasoline with other petroleum products, or casinghead gasoline alone; and also admits that they were not used contrary to the regulations; and that the dome

cover placards are required only on casinghead gasoline or an admixture containing casinghead gasoline)" (*Record*, p. 229, 230).

Further, if the Court had given consideration to the matter, doubtless it would have abstained from doing that which the representatives of the Government have done in this application. It would not have gone entirely out of the record and appealed to the records of the Bureau of Safe Transportation to prove that the product which the law permits the defendant to transport, and which the Government admits was transported according to law, is more destructive than dynamite; and to secure the details of accidents in Tennessee and Oklahoma with which defendant was not connected, and of another in Texas placarded in accordance with the requirements of the Interstate Commerce Commission.

Nor would the Circuit Court of Appeals have failed in its duty to properly apply the law of this case even if the effect had been to "nullify" the law as to explosives, which the Government in its brief admits was neither nullified nor violated.

The obvious purpose of the statements contained on pages 4 and 5 of the petition for the writ, concerning these accidents, is to convey to this Court the impression that respondent's course was responsible for or had a tendency to cause the accidents cited. Nothing could be further from the truth. As above pointed out, the Government admitted, and respondent also independently proved, that the safety regulations, as such, were strictly complied with by respondent. On the other

hand, the accidents mentioned at Memphis and Ardmore, in which a number of people were killed, were not with respect to shipments of respondent's, but, on the contrary, were with respect to shipments of others, *described as the Government claims they ought to have been*. And as to the accident at Gainesville, Texas, which was respondent's, the evidence taken in a joint investigation by the county authorities and the Bureau of Explosives showed conclusively that the man who caused the accident was not only not misled by the billing, but, on the contrary, had never even seen the way-bill, and, furthermore, that he caused the accident by intentional disobedience of the instructions on the car prescribed by the Bureau of Safe Transportation.

As above stated, none of this matter is any part of the record in the case, but the allusion to it by the Government, with the inferences sought to be conveyed, is characteristic of the tactics by which its representatives succeeded in obtaining a conviction in the District Court.

The Government thinks further that it was remarkable that the Circuit Court of Appeals "does not mention" Rule 44 of the Western Classification, "though such tariff provisions appear in full in the record." If the Circuit Court of Appeals had "even mentioned" all the improper evidence that was admitted upon the trial, the opinion would have been very tiresomely long, without being in any way improved.

During the time in question there was a divergence between the description to be used for safe transportation purposes, as prescribed by such regulations which are published in the Western Classification, and the de-

scription for rate purposes published in the commodity tariff applicable to the shipments.

In this case the Government is now attempting to claim, because the description required for *safety purposes* takes a higher rate than that prescribed for *rate purposes*, that it, the safety description, determines the rate legally applicable. It would be the first to claim the opposite if the situation was reversed.

The statement of the application that there was evidence

“showing that the respondent had obtained the publication of these rates on unrefined naphtha by misrepresentation and by concealing the fact that it was intended to ship these condensates under that description, contrary both to the Commission’s regulations and to the carriers tariffs”,

is a gross perversion of the record, which shows that the rate was secured with full knowledge that it was to be applied to the product of the casinghead plants intended to be shipped for further refining (*Record*, pp. 559-576, 692, 693); and that with the knowledge of the railroads and the employees of the Government it was so shipped for more than two years (*Record*, pp. 179-182, 408-416, 429-440, 550-557).

The statement made in argument on page 6 of the petition, that gasoline rates have been expressly held reasonable as applied to such condensates, in the case of *Southern Carbon Co. v. A. & L. M. Ry. Co.*, 62 I. C. C. 733, and the statement on page 8 that their “designation as gasoline” had been prescribed in that case by the Interstate Commerce Commission for rating, are directly contrary to the fact.

As will be seen by reference to that case (62 I. C. C. 734, 735), the product there in issue was an absorption-process gasoline, and the question was whether it should be described as "gasoline" or "liquefied petroleum gas". There were no "unrefined naptha" rates in issue, and the propriety of such a description was not even considered. There is nothing whatever in that case to indicate the degree of blend involved which would be absolutely controlling as to whether that material could ever be appropriately called "unrefined naptha".

The statement contained on page 8 of the petition, to the effect that it was admitted by respondent's expert that the condensates in issue were popularly known as gasoline, is also quite misleading. For this same expert (*Record*, p. 694) coupled that statement with the further statement that it was not a correct description, and that in a bulletin issued by the Bureau of Mines, of which he was the author, written more than two years before the incidents in issue, which was offered in evidence, he there stated that the name "gasoline" was very loosely applied and that this material was not in fact gasoline (*Record*, p. 694).

It is not conceived that this Court can be influenced by the Government's suggestion that unless this unwarranted criminal action against defendant is sustained the Government may lose in a civil action to which it is a party.

The suggestion is that the Government should be allowed to do a wrong in this case in order to help it to a further wrong in another case.

The application adds to the record, perverts the facts, makes untenable propositions of law, and asks the Court to take action based upon unworthy and immoral considerations, and should be denied.

April 26, 1923.

Respectfully submitted,

R. L. BATTS,

FRANK M. SWACKER,

*Attorneys for Respondent.*

OSTPONED TO MERITS  
DEC 1 - 1924

Office Supreme Court, U. S.

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NOV 20 1924

WM. R. STANSBURY

CLERK

IN THE  
Supreme Court of the United States.

No. 40,  
OCTOBER TERM, 1924.  
(29544)

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UNITED STATES OF AMERICA,

*Petitioner,*

*vs.*

GULF REFINING COMPANY,

*Respondent,*

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MOTIONS TO DISMISS AND TO AFFIRM.

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R. L. BATTS,  
JAMES B. DIGGS,  
FRANK M. SWACKER,  
*Attorneys for Respondent.*





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IN THE  
SUPREME COURT OF THE UNITED STATES.

No. 40,

OCTOBER TERM, 1924.

(29544)

---

UNITED STATES OF AMERICA,

*Petitioner,*

*vs.*

GULF REFINING COMPANY,

*Respondent.*

---

**MOTIONS TO DISMISS AND TO AFFIRM.**

Now comes Gulf Refining Company, the respondent herein, by R. L. Batts, James B. Diggs and Frank M. Swacker, its attorneys, and moves this Court to dismiss and quash its writ of certiorari herein for want of jurisdiction or because the same was improvidently issued, for the reasons stated in the annexed argument; and the said respondent also moves this Court to affirm the judgment of the Circuit Court of Appeals, for the Eighth Circuit, in said cause, upon the ground that it is manifest that the questions on which the decision of the cause depends are so frivolous as not to need further argument.

R. L. BATTS,  
JAMES B. DIGGS,  
FRANK M. SWACKER,  
*Attorneys for Respondent.*

PLEASE TAKE NOTICE, that, upon all the papers and proceedings herein, we shall submit to the Supreme Court of the United States, at a stated term thereof, on Monday, <sup>November 17</sup> ~~October 14~~, 1924, at the Capitol in the City of Washington, D. C., at the opening of court on that day or as soon thereafter as counsel can be heard, the motions of which the foregoing are copies; and that we shall submit with said motions, and in support of the same, the arguments annexed hereto.

Yours, etc.,

R. L. BATTS,  
JAMES B. DIGGS,  
FRANK M. SWACKER,  
*Attorneys for Respondent.*

To

HON. JAMES M. BECK,  
*Solicitor General of the United States,*  
for Petitioner,  
Washington, D. C.



IN THE  
SUPREME COURT OF THE UNITED STATES.

No. 40,

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UNITED STATES OF AMERICA,

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**ARGUMENT.**

**Statement.**

The writ of certiorari in this case was issued to bring up for review from the Circuit Court of Appeals, for the Eighth Circuit, its judgment setting aside a judgment of conviction in the District Court of the United States, for the Eastern District of Oklahoma, on an indictment, and remanding the case to said District Court, with directions to grant a new trial (*Record, p. 1692*).

The indictment, in ninety-nine counts, attempts to charge the respondent with having obtained from certain common carriers concessions, from the lawful rate applicable thereto, with respect to the transportation of certain shipments alleged to have consisted of gasoline, in violation of the Elkins Act (*Rec., pp. 1-145*).

During the period covered by the indictment, there were in force, over the routes and between the points between which the transportation occurred, other and lower rates applicable to the transportation of unrefined naphtha, which rates the carriers had instituted at the respondent's request (*Rec.*, pp. 559-574).

There was and is no dispute concerning the identity of the commodity shipped. The dispute is concerning its proper name; that is, whether it is gasoline, as charged in the indictment, or unrefined naphtha, as is insisted by the respondent. The material is a liquid condensate of petroleum gas and is commonly called "casinghead gasoline", although called by many other names (*Rec.*, pp. 321, 682, 683).

It is conceded by the respondent that the material is popularly (but erroneously) called "gasoline" (*Rec.*, p. 694). On the other hand, it is conceded by the Government that the material is unfinished as gasoline (*Rec.*, pp. 883-892).

Just before submitting this issue of fact to the jury, the District Court overruled, without serious consideration, the contentions of law made by the respondent, although stating that were the defendant an individual whose liberty was at stake, instead of a corporation, he would not do so (*Rec.*, p. 899).

The jury found for the Government, and the respondent took a writ of error, assigning one hundred and nineteen errors (*Rec.*, pp. 1542-1665), almost all of which were with respect to rulings upon questions of evidence, prejudicial summing up by the Government in appealing to pecuniary interests of the jury, and the giving and refusing of certain charges to the jury by the Court.

The Circuit Court of Appeals, without passing on the questions raised by respondent concerning the application or construction of the Act or the indictment, reviewed the evidence dealing with the principal fact, *i. e.* the proper name of the commodity, and found meritorious assignments of error concerning the introduction of certain evidence and argument by the Government that it imported fraudulent conduct on the part of the respondent, which the Circuit Court of Appeals considered, in the light of the testimony in the case, was a groundless contention and highly prejudicial; that certain other testimony admitted concerning respondent's course in other circumstances was without evidentiary weight, and that other testimony concerning the course of other shippers under other circumstances, or without any showing of similarity of circumstances, was erroneously admitted. It also found meritorious assignments of error concerning statements made by counsel for the prosecution in argument of which there was no evidence in the record, and which

“could have been made for no other purpose than to prejudice the jury against”

two of respondent's expert witnesses. It also found meritorious assignments of error concerning argument by Government counsel to the jury to the effect that, the shipments having moved during the period of federal control, the jurors themselves would have to contribute (by way of income taxes) to make up any deficiency in operation, and that the defendant, by the advantage which it got over its competitors, in this way placed in its own

“pocket hundreds of thousands of dollars which they were not entitled to, and which the people of the United States have got to bear the burdens, and it is true that the Gulf Refining Company will have to join, thank goodness, the other people of the United States to pay these things if it had to be paid.”

After considering the foregoing assignments of error, the Court said (*Rec.*, pp. 1691, 1692):

“All of the assignments that have been mentioned are in our judgment meritorious, the matters complained of were prejudicial and would require a reversal. Many errors are assigned, to the admission and rejection of evidence, to the instructions of the court, to the refusal of requests to instruct, and to comments by the court during the progress of the trial, which it is claimed were prejudicial and unfair. But the view we take of the case renders it unnecessary to pass on them.

“It is our opinion that when all competent and relevant proof in the case is given a fair and impartial consideration the conclusion that the verdict is without support is inevitable. The prosecution rested its case in chief on testimony of operators of casing-head compression plants that they called the condensate and their blended products gasoline, believed they were gasoline and shipped them as gasoline; and also on the claimed admissions about which we have expressed our opinion. They could not ship their products otherwise, there was no rate on unrefined naptha or unfinished naptha to their points of destination; and as to the shipments to the Texas Company at Port Arthur, on which gasoline rates had been exacted and collected, that company had pending in the

U. S. District Court for the Eastern District of Texas at the time of the trial an action for the recovery of the difference between what it had been required to pay and the rates on unrefined naphtha. The defendant then called witnesses thoroughly familiar, technically and practically, with the recovery of petroleum and natural gas, their treatment, their component parts, their reduction to usable and marketable commodities, and they were in accord in their testimony that the commodities were appropriately designated as unrefined naphtha, were unrefined naphtha and were not gasoline, and could not be appropriately so designated. They stated the facts on which their conclusions were based. Then the best informed witnesses in behalf of the prosecution, the only ones who spoke with general information on the subject, Dr. DeBarr and Mr. Dykema, were called and both stated that casing-head condensate was too volatile and dangerous for use as gasoline—the former as a witness and the latter in his article prepared and issued as an official bulletin by the Bureau of Mines; and neither claimed that either the condensate or the blended product would fulfil any specification for gasoline.

“We think the court erred in refusing defendant’s request for an instructed verdict in its favor.”

For respondent, it is contended:

1. That the writ of certiorari should be dismissed, (a) for lack of jurisdiction in the Court to review, by certiorari (or otherwise), a judgment of the Circuit Court of Appeals in favor of a defendant in a criminal case (other than under the Criminal Appeals Act—not here

involved), or (b) because, even if there is jurisdiction in a proper case, the instant one is not such, the judgment of the Circuit Court of Appeals not being a final judgment but a remand for a new trial, and there being no extraordinary circumstances such as warrant the exercise of the power; or

2. That the judgment of the Circuit Court of Appeals should be affirmed, because the questions on which the decision of the cause depends are so frivolous as not to need further argument.

## I.

### A. Jurisdiction.

As the appellate jurisdiction of this Court is purely statutory, the initial inquiry in this case is necessarily as to the existence of jurisdiction of the review sought.

“By the Constitution of the United States, ... cases to which the judicial power of the United States extends, and of which original jurisdiction is not conferred on this court, ‘the Supreme Court shall have appellate jurisdiction, with such exceptions and under such regulations as the Congress shall make.’ Constitution, art. 3, sec. 2 This court, therefore, as it has always held, can exercise no appellate jurisdiction, except in the cases, and in the manner and form, defined and prescribed by Congress.”

*American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, 378.

In *United States v. Sanges*, 144 U. S. 310, this Court, upon a writ of error, considered at length the question whether the provision of the Judiciary Act of 1891 concerning the review by it on appeals or writs of error of cases involving the construction or application of the Constitution (*Act of March 3, 1891, chap. 517, sec. 5; 26 Stat. 827, 828*) conferred upon the United States the right to sue out a writ of error in any criminal case; and, after a careful review of the English and State cases, reached the conclusion that those cases show that under the common law, and in the absence of express statutory provision giving such right to the State, a writ of error cannot be sued out in a criminal case after a final judgment in favor of the defendant, whether that judgment has been rendered upon a verdict of acquittal or upon a determination by the court of an issue of law.

The Court then, after reviewing the history of the section in question and other provisions of the Judiciary Act, reached the conclusion that the provision for review by it by writ of error, as applied to a criminal case, did not

“confer upon the United States the right to bring up a criminal case of any grade after judgment below in favor of the defendant” (*p. 323*).

And further stated:

“It is impossible to presume an intention on the part of Congress to make so serious and far-reaching an innovation in the criminal jurisprudence of the United States” (*p. 323*).

After the decision in the *Sanges case*, *supra*, by the Criminal Appeals Act (*March 2, 1907; 34 Stat. 1246*)



it was expressly provided that a writ of error might be taken on behalf of the United States from the District or Circuit Courts direct to this Court in certain specific instances; that is, from a judgment dismissing an indictment or arresting judgment thereon, where the judgment is based upon invalidity or construction of the statute; and from a judgment sustaining a special plea in bar when the defendant has not been put in jeopardy. And even in this limited class of cases it is required that the writ must be taken within thirty days and diligently prosecuted, and shall have precedence over all other cases, and that pending determination the defendant shall be admitted to bail on his own recognizance; and it is further expressly provided that in no circumstances will the writ be allowed where there has been a verdict in favor of the defendant.

It will be observed that this serious and far-reaching innovation in the criminal jurisprudence of the United States was made in most explicit terms and surrounded with explicit limitations and safeguards. It alters the rule laid down in the *Sanges case* as applied only to the particular instances embraced; that is, judgments dismissing indictments or arresting judgment thereon, for invalidity, or on the construction, of the statute, or on special pleas in bar.

In *United States v. Keitel*, 211 U. S. 370, concerning the scope of the Criminal Appeals Act, this Court said (pp. 398, 399):

“That act, we think, plainly shows that in giving to the United States the right to invoke the authority of this court by direct writ of error in the cases for which it provides contemplates vest-

ing this court with jurisdiction only to review the particular question decided by the court below for which the statute provides. In other words, that the purpose of the statute was to give the United States the right to seek a review of decisions of the lower court concerning the subjects embraced within the clauses of the statute, and not to open here the whole case. We think this conclusion arises not only because the giving of the exceptional right to review in favor of the United States is limited by the very terms of the statute to authority to re-examine the particular decisions which the statute embraces, but also because of the whole context, which clearly indicates that the purpose was to confine the right given to a review of the decisions enumerated in the statute, leaving all other questions to be controlled by the general mode of procedure governing the same."

In *United States v. Dickinson*, 213 U. S. 92, this Court, having granted its writ of certiorari to review a judgment of the Circuit Court of Appeals, for the First Circuit, setting aside a judgment of conviction in a criminal case and remanding it to the District Court "for further proceedings in accordance with law" because of the urgency of the Government as to the importance of the particular decision, notwithstanding the judgment of the Circuit Court of Appeals was not final, at the threshold of the consideration of the case found itself confronted with the question of its power to grant its writ of certiorari under the Act of 1891 in a criminal case, whatever the supposed importance of the question involved.

Section 6 of that Act (26 Stat. 826), after setting forth the jurisdiction of the Circuit Court of Appeals and

providing for the certification by it to the Supreme Court of questions upon which it desires instructions, and providing that the Supreme Court may either give such instructions or require the whole cause to be sent up for its determination in the same manner as though brought here for review by writ of error or appeal, provides:

“And excepting also that in any such case as is hereinbefore made final in the Circuit Court of Appeals it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.”

After calling attention to the fact that the provisions in the clauses relating to appeals or writs of error, where constitutional questions were involved, made no distinction in their language between civil and criminal cases, and no distinction as to the party who was aggrieved by the decision in the court below, and referring to its decision in the *Sanges case*, *supra*, this Court stated (213 U. S. 99) that it was there held,

“on great consideration, that the right of review given by that provision of section 5, so far as it related to criminal cases, must be limited to review at the instance of the defendant after a decision in favor of the Government. The decision was reached after a thorough examination of the Federal legislation as to appellate jurisdiction in criminal cases and of the authorities in England and in the United States relating to criminal appeals, in which the court finds no precedent without express

statutory enactment for any review of any judgment in favor of the accused."

It was argued by the Government, however, that the general power to issue writs provided by Section 14 of the Judiciary Act of 1789 would authorize its use for the purpose. But the Court said (*p. 100*):

"But that was not a grant to this court of appellate jurisdiction to review by certiorari for the mere correction of error any or all decisions of the lower Federal courts not otherwise reviewable."

And, after quoting from its opinion in *American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, concerning the scope of the power of the Court to issue original independent writs, this Court said (*p. 102*):

"But the distinction between preventing excesses of jurisdiction and the mere correction of error is a fundamental one, and the rule remains that appeal and writ of error, being the proper forms of procedure provided for the mere correction of error, the appellate jurisdiction of this court for that purpose is limited to the cases in which express provision is made for appeals or writs of error, and that certiorari cannot be independently used to supply the place of a writ of error for the mere correction of error."

It was further argued by the Government in the *Dickinson* case (citing *Forsyth v. Hammond*, 166 U. S. 506, 514, 515, and *American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, as authority) that it was competent, under the Act of March 3, 1891, for this Court to take away from the final determination of any Circuit

Court of Appeals, at any stage before or after decision rendered in that court, *any* case involving questions of gravity and general importance, including the review of a criminal case on certiorari on the application of the Government, to the same extent that it might review a civil case. There is nothing, however, in either of those cases to indicate that they tend to overrule or modify in the slightest what was said by the Court in the *Sanges case*. On the contrary, the statements in *Forsyth v. Hammond*, *supra*, concerning the court's authority to issue the writ—which relates more directly to the stage of the case below than to its character—are expressly limited by the preceding statement of the Court (166 U. S. 513):

“It applies to every case in which but for it the decision of the Circuit Court of Appeals would be absolutely final, and authorizes this court to bring before it for review and determination the case so pending in the Circuit Court of Appeals, and to *exercise all the power and authority over it which this court would have in any case brought to it by appeal or writ of error.*” (Italics ours.)

Manifestly if, as held by the Court in the *Sanges case*, the Court is without power *on writ of error* to review a judgment in a criminal case favorable to the accused, that would be the extent of its power and authority upon *certiorari*.

It was also argued by the Government in the *Dickinson case* that the Act of 1891 might be construed to confer upon the Government a right of review in criminal cases because the Criminal Appeals Act (passed after the decision in the *Sanges case*) provided for a writ of error

in behalf of the Government in criminal cases. But the Court rejected that argument also, again holding that the Criminal Appeals Act was strictly limited to review of judgments in the specified classes of cases only, and was not to be extended beyond its terms.

It may be taken, therefore, as settled law up to the time of the decision in the *Dickinson case* that the United States was without right, either by certiorari or writ of error, to a review of a judgment adverse to it in a criminal case, save only the cases specifically covered by the Criminal Appeals Act, and that

“so serious and far-reaching an innovation in the criminal jurisprudence of the United States”

would be deemed to have been made only by the use of most explicit language.

After the decision in the *Dickinson case*, the provision concerning certiorari contained in the Act of 1891 (now Section 240 of the Judicial Code) was amended by the addition of the words shown in black face below:

“In any case, **civil or criminal**, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, **upon the petition of any party thereto**, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.”

The question is, does the addition of these words, “civil or criminal” and “upon the petition of any party

thereto'', in clear and explicit terms effect a change in the criminal jurisprudence of the country even more radical than did the Criminal Appeals Act? If it had the effect of conferring upon the Government a right of review of a decision adverse to it in a criminal case, it would be far more radical and comprehensive than the Criminal Appeals Act, without doubt. It would embrace not only the cases specifically enumerated by the Criminal Appeals Act, but also those specifically excepted therefrom by it, *i. e.* even cases where there had been previous jeopardy.

Of course, a construction extending it to cases of previous jeopardy would not be given, because of conflict with the Fifth Amendment; yet it is not excepted, as in the Criminal Appeals Act, but would be literally embraced.

The amendment does not purport to affect the Criminal Appeals Act. Yet, giving it the construction suggested, it would have the practical effect of repealing the limitations—such as personal recognizance and expedition—contained therein by the simple alternative of applying for a writ of certiorari instead of a writ of error.

Dealing now with the question of power—propriety aside, for to government bureaus all prosecutions are of peculiar gravity and general importance—the Government would be entitled to seek a review in every criminal case in which a conviction was reversed by the Circuit Court of Appeals, regardless of the character of error involved. By far the great majority of such cases turns solely on ordinary questions of evidence. Yet it is to be supposed that this Court might be importuned to review

*Amendment  
not applied  
enough*

*1.*



every such case. If such was the object of the legislation, the conferring of jurisdiction in the Circuit Court of Appeals to render *final* judgments would be a misnomer and a vain gesture. Could not more apt language be found to affect any such legislative intention? No difficulty was experienced in finding it for the Criminal Appeals Act. That Act does not conceal the right under the phrase "upon the petition of any party", but says "by and on behalf of the United States." The addition of the words "civil or criminal" does not necessarily enlarge the provision beyond the scope of the Act at the time of the decisions of the *Sanges* and *Dickinson* cases. The phrase "any case" certainly includes both civil and criminal cases, and criminal cases were certainly among those in which the judgment of the Circuit Court of Appeals was made final.

A meaning can be found for the added words without construing them as effecting such a radical change. Defendants jointly indicted are both parties to a criminal case, and it may be that the object of the language was to confer upon one of them the right to invoke the privilege, whether the other joined in the petition or not.

If it be intended that the Government, as a party in a criminal case, should have the benefit of the amended statute, cases are conceivable where the Government might apply for certiorari that would not involve a review of a decision of the Circuit Court of Appeals adverse to the Government in a criminal case. For example, it might be used to remove a criminal case of widespread importance from the Circuit Court of Appeals *before* final judgment by that court, in order to se-

cure an authoritative determination by this Court. The right might be used to remove a writ of error from the Circuit Court of Appeals (before decision) because one of the Judges thereof had participated in the decision below, as, for instance, in *American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, 383. Such instances would be fundamentally different from permitting the Government to speculate, first, on its chances in the Circuit Court of Appeals, and then, on being defeated there, to vex and harass a defendant by what would amount to a second appeal. This Court has said repeatedly that the function of the writ of certiorari is not to accord a defeated party another chance.

“The jurisdiction was not conferred upon the court merely to give the defeated party in the Circuit Court of Appeals another hearing.”

*Magnum Import Co. v. Coty*, 262 U. S. 159, 163;  
67 L. Ed. 922.

The Government may suggest that reference to the debates in Congress will show that the intent of the amendment was to confer upon it, in the discretion of this court, the right to a review of judgments adverse to it in criminal cases, notwithstanding this court has repeatedly said that they are

“not appropriate sources of information from which to discover the meaning of the language”

used, as in *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, where it further said (p. 318):

“The reason is that it is impossible to determine with certainty what construction was put

upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

Such a reference in the instant case not only does not support the construction suggested, but most aptly illustrates the situation above suggested by the Court.

From a reference to the Congressional Record of February 8, 1911, it would appear from the questions of Senator Heyburn and the replies of Senator, now Mr. Justice, Sutherland, that the latter considered the amendment would work the result suggested. After the bill went to conference, however, the House Conference Committee Report (*46 Cong. Rec.*, p. 4001) showed an entirely different conception of the purposes and effect of the change. It is as follows:

"The other amendments made by the Senate, embracing substantive changes were as follows:

\* \* \* \* \*

"Section 240 (227). The insertion of the words, 'civil or criminal,' and the words, 'upon the petition of any party thereto.' The effect of this amendment is to make more clear the right of the Supreme Court of the United States by writ of certiorari to bring before it for review any case in which the judgment or decree of the Circuit Court of Appeals is made final by the provisions of the Act, and to define more accurately the method by which such writ might be obtained."

Granting a new right is not making "more clear" an existing right, nor is the providing of process for the exercise of a right newly granted equivalent to "define more accurately the method" of exercise of an existing right. And such a resort, for the purpose of proving the intent of the legislation, proves too much; for such a necessity is at once an admission of the absence of clear and explicit terms, such as this Court, in the *Sanges* case, considered requisite, and such as was employed in the Criminal Appeals Act. However, regardless of the intent of the legislation, it is beyond cavil that what was done, rather than what was intended, controls.

No change whatever was even attempted to be made in the scope of review. Whatever change may have been effected in the class of cases or the parties made eligible to petition, the "power and authority" in the case were left the same as before; that is, to review

"with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court."

Appeal, of course, has no place in the discussion.

As held in the *Sanges* case, before the Criminal Appeals Act, this court had no power or authority to review, by writ of error,

"a criminal case of any grade after judgment below in favor of defendant."

By the Criminal Appeals Act, jurisdiction was conferred to review by writ of error a certain limited class of judgments adverse to the Government in criminal

cases. In both the *Keitel* and *Dickinson* cases, the Court held that such review by writ of error was strictly limited to the enumerated cases. A grant, therefore, of the alternative writ of certiorari, expressly limited to "the same power and authority of review" existing by writ of error, does not, through any inherent quality of the writ of certiorari, enlarge the scope of review. It would be a contradiction in terms. Nor, *a fortiori*, in the face of such contradictory terms, is it possible

"to presume an intention on the part of Congress to make so serious and far-reaching an innovation in the criminal jurisprudence of the United States."

Since the amendment of 1911, in several instances the Government has petitioned for certiorari to review a judgment adverse to it in a criminal case, but in each instance—other than the present case—the court has refused to grant the writ, without opinion.

*United States v. A. Gero Marshall*, 226 U. S. 607.

*United States v. John H. Patterson*, 238 U. S. 635.

## B. Propriety.

If it is considered that the Court has jurisdiction to review, under the writ, a judgment adverse to the Government in a criminal case, then it is contended that the instant case is not a proper one to appeal to the court's discretion.

The Court has repeatedly said that it will exercise its discretion to review by certiorari,

“sparingly and with great caution, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision.”

*American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, 383.

*Lau Ow Bew, Petitioner*, 141 U. S. 583; s. c., 144 U. S. 47.

*Magnum Import Co. v. Coty*, 262 U. S. 159, 163; 67 L. Ed. 922.

It is well settled that, except in such extraordinary cases as *Forsyth v. Hammond*, 166 U. S. 506, the Court will not issue its writ except to review a final judgment.

*American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, 384.

*The Conqueror*, 166 U. S. 110, 113.

*The Three Friends*, 166 U. S. 1.

*Chicago & Northwestern Ry. Co. v. Osborne*, 146 U. S. 354.

In the instant case there is present not one of the considerations which the Court has indicated appeal to its discretion. There is not even a final judgment, but, instead, the mandate is for a new trial (*Rec.*, p. 1692).

It may be that the Court granted the writ on the erroneous representation of the petitioner—doubtless inadvertently made in the absence of the mandate—that the Circuit Court of Appeals had “reversed and remanded for dismissal” the case, when the errors found by the Court “warranted the Circuit Court of Appeals at most in remanding the case for a new trial”; as the conclu-

sion of the petitioner's argument is that the writ should be issued

"in view of the public importance of the questions involved, and the extraordinary action of the Circuit Court of Appeals in reversing and remanding for dismissal, instead of at most remanding the case for a new trial." (*Petition*, pp. 8, 9).

With the record containing the mandate available now, however, it is apparent that the grounds supposed to have warranted an exception to the rule against removal before final decree do not exist.

If the representations contained in the petition were not made under a misapprehension as to the contents of the mandate, they must have been made under a misapprehension of elementary principles concerning what constitutes finality of judgments.

This Court has repeatedly held that a mandate for a new trial, or even a direction to proceed in accordance with the opinion or law, is not a final judgment.

As stated in *Hazeltine v. Central Bank, etc., No. 1*, 183 U. S. 130,

"The face of the judgment is the test of its finality."

*Chicago & Northwestern Ry. Co. v. Osborne*, 146 U. S. 354, not only was a direction to proceed in accordance with the opinion which involved a holding by the Circuit Court of Appeals that a verdict should have been instructed for the defendant, but it also involved a question of the construction of the Interstate Commerce Act, which this case does not. Yet certiorari was denied, because the judgment was not final.



The petition shows no other extraordinary questions of peculiar gravity or general importance. There is no question of international importance, treaty construction, or uniformity of decision involved; nor is there any question of constitutional law or statutory construction involved. The only questions of statutory construction occurring in the case at all were those raised by the respondent, and ruled against it by the District Court; and, although such rulings were assigned as error and argued in the Circuit Court of Appeals, that Court decided none of them, but based its decision purely on questions of evidence, as is apparent from the excerpts from its opinion, *ante pp. 6, 7 (Rec., pp. 1691, 1692)*. The most important of these questions of law raised by the respondent in the District Court was that under the authority of the *American Tie & Timber Co. case*, 234 U. S. 138, the question of the proper classification of the commodity shipped was an administrative one within the exclusive primary jurisdiction of the Interstate Commerce Commission to decide, which contention the Government there vigorously opposed and was sustained by the District Court, and, as before stated, the Circuit Court of Appeals did not pass on respondent's assignments of error in that ruling.

Now, however, in a deft effort to raise a question appealing to the exercise of this court's discretion, the Government, in this court, in effect attempts to reverse its position and for the first time contend that the doctrine theretofore opposed by it is applicable. Why? Because, since the trial of the case, the Interstate Commerce Commission has rendered a decision (*Southern Carbon Co. v. A. & L. M. Ry. Co.*, 62 I. C. C. 733) which

it is claimed decided impliedly that the proper classification of the material is "gasoline", and which decision, under the doctrine of the *American Tie & Timber Co. case, supra*, presumably it would be contended is controlling in this case (*Petition, p. 6*). But the claim itself is specious, as a reference to the decision of the Commission will readily disclose. The Commission did not have under consideration the question whether the classification of gasoline or that of unrefined naphtha was applicable; there were no unrefined naphtha rates or classification involved in the case. The question considered and decided in that case was purely whether the rates on gasoline, as applied to the condensate there involved, were reasonable. There is not even anything in the report of the Commission to indicate that the condensate involved in that case was the same as that involved in the instant case. But, all this aside, there is, for review or correction, no judgment or ruling of the Circuit Court of Appeals on the point.

The only other alleged ruling of supposed gravity or general importance attempted to be set up by the petition is the supposed practical nullification of

"the powers of the Government under the so-called Transportation of Explosives Act",

growing out of the fact that

"the opinion of the Circuit Court of Appeals *does not even mention* the Commission's explosive regulations." (*Petition, p. 5*).

Here again is an effort upon the part of the Government to raise in this court, for the first time, a question

which did not even exist in the court below—and that by taking a position directly opposite to that taken by it in the District Court. The obvious purpose is an ingenious attempt to argue to this court that, because of the fact that the safe transportation regulations prescribed by the Interstate Commerce Commission are published by the carriers in their classifications, those regulations thereby become controlling descriptions for rate purposes. This argument was not attempted to be made in the District Court—and could not be consistently made with the way the indictment is pleaded. On the contrary, the Government expressly conceded that it was not contending that the safe transportation regulations as such had not been complied with (*Rec.*, pp. 221-230, 429-441); and the Court instructed the jury that they were not in question (pp. 928, 929, 942, 943). This concession would itself destroy the Government's case, even if there was any merit in the argument; but it is in fact utterly without merit. In the first place, the rules in question are rules promulgated by the Interstate Commerce Commission under the Transportation of Explosives Act (35 Stat. 1134)—not under its authority to prescribe rates and classifications for rate purposes—and are a set of rules which govern the packing and the description to be used in billing and labelling the articles covered thereby, in the interest of safety (*Rec.*, p. 1241). And finally the argument destroys itself because one of the first rules of those regulations, *i. e.* 1712, is that such articles

“must be properly described by the shipper in his shipping order and bill of lading under the specific

or general name provided for the description of such freight *by the carrier's classification and tariff governing.*" (*Rec.*, p. 1243).

Manifestly, if the specific name of the material shipped was "unrefined naphtha", the very rules themselves would require the use of that description for *classification and rate purposes*, even though an additional different description was required by subsequent rules for safety purposes. Moreover, no such conflict in fact existed in the rules in force prior to September 1, 1918, which merely provided, so far as safety was concerned, that, while certain other condensate *must* be shipped under the description "liquefied petroleum gas," that here involved "*may be* described and shipped as gasoline" (*Rec.*, pp. 429-441, 1225).

The rules governing safety description in force from September 1, 1918, provided that the condensate here involved

"*must* be described and shipped as gasoline, casinghead gasoline, or casinghead naphtha" (*Rec.*, p. 1259);

and the evidence shows, not only by the shipping orders themselves, which are exhibits in the case (*Rec.*, pp. 942, 943), but also by the express admission of the Government, that this regulation was complied with by the use of the double descriptions "Casinghead Naphtha" and "Unrefined Naphtha" on the shipping orders (*Rec.*, pp. 227, 229, 230, 942, 943).

However, as previously pointed out, in this respect also there is no question, ruling or judgment involved in

the Circuit Court of Appeals' opinion or mandate affecting the subject in any way whatever.

There is in fact involved therefore in the judgment of the Circuit Court of Appeals no decision of any question of law for review by this Court. Upon a review thereof this Court might differ with the Circuit Court of Appeals concerning the admissibility of evidence, or upon the conclusion of fact from the legitimate evidence in the case, which it may be claimed is inferred by that court's conclusion that a verdict for the defendant should have been directed thereon. But it is not understood that this Court issues its writ of certiorari for the exercise of any such function.

*Southern Power Co. v. N. C. Pub. Ser. Com.,*  
— U. S. —; 68 L. Ed. 198 (No. 110, October  
Term, 1923, decided Jan. 7, 1924).

*Union Pacific Ry. Co. v. United States*, 116 U. S.  
154.

*United States v. Patterson*, 238 U. S. 635, where this Court declined to issue its writ, presented a situation practically identical with that here involved.

Under the circumstances above pointed out, it is thought that this court granted its writ under a misapprehension as to the questions or situation involved, and, upon being thus advised of the actual situation and questions involved, will dismiss it as having been improvidently issued.

## II.

**The judgment of the Circuit Court of Appeals should be affirmed,** because the questions on which the decision of the cause depends are so frivolous as not to need further argument.

Since if this Court should agree with the Circuit Court of Appeals that prejudicial error had occurred in the trial of the case its judgment would be to affirm the mandate of that Court for a new trial, it remains to be seen whether the conclusions of the Circuit Court of Appeals concerning the assignments of error upon which it passed are open to other than frivolous argument.

The first group of assignments of error (*Rec.*, pp. 1544-1548, 1550-1553, 1599-1601, 1632, 1638, 1640, 1641, 1663) ruled upon by the Circuit Court of Appeals (p. 1690) was as to the insistence of the prosecution throughout the trial, during the introduction of evidence and in argument, that the conduct of the defendant was fraudulent. One of the grounds of this insistence was the fact that the defendant's traffic agent had asked the carriers to institute the lower rates on unrefined naphtha, whereas until then the product had been shipped under the designation "gasoline".

In the first place the evidence itself was utterly inadmissible, because it had no probative force whatever and was a clear violation of the *res inter alios acta* rule.

If there had been unrefined naphtha rates, as well as gasoline rates, in force at the times the commodity had been shipped under the designation "gasoline", offering

a choice of terms, the evidence might have had some probative force on the theory of admissions.

*1 Wigmore on Evidence, Secs. 32, 33, 442.*

*Lake Erie & W. R. Co. v. Muff, 132 Ind. 168.*

*Chicago, St. L. & P. R. Co. v. Champion, 32 N. E. Rep. 874.*

*Emerson v. Lowell Gaslight Co., 3 Allen, 410, 417.*

*Hunt v. Lowell Gaslight Co., 8 Allen, 169, 171.*

*Baxter v. Doe, 142 Mass. 558, 561.*

*Reeve v. Dennett, 145 Mass. 28.*

*State v. Justus, 11 Oregon, 182.*

*Leonard v. Southern Pacific Co., 21 Oregon, 555, 559.*

*Cohn v. Saidel, 71 N. H. 558; 53 Atl. Rep. 800.*

*U. S. Fidelity & G. Co. v. Des Moines National Bank, 145 Fed. Rep. 273.*

*Bird v. United States, 180 U. S. 356, 359.*

*Barney v. Rickard, 157 U. S. 352, 367.*

*Thompson v. Bowie, 4 Wall. 463, 471.*

*United States v. Ross, 92 U. S. 281.*

*Hall v. United States, 150 U. S. 76, 81.*

*United States v. Baxter, 46 Fed. Rep. 350.*

The Government argued in the Circuit Court of Appeals that the evidence was relevant because, if the material was not gasoline, shipping it as such would have been a crime under the Interstate Commerce Act.

If such were in fact the case, it of course would not make the evidence relevant; but such is not the fact in any event.

It might well be that, under what is known as the analogy rule of carriers' classifications, "gasoline"



would be the nearest analogous article in the absence of a specific classification "unrefined naphtha".

The Interstate Commerce Commission has itself repeatedly held that where under the classification two designations might be applicable, the more specific would prevail.

*Colorado C. & F. Co. v. Atchison, T. & S. F. Ry. Co.*, 83 I. C. C. 267.

*U. S. Industrial Alcohol Co. v. Southern Ry. Co.*, 68 I. C. C. 389.

*Highland Park Mfg. Co. v. Southern Ry. Co.*, 26 I. C. C. 67.

*Augusta Veneer Co. v. Southern Ry. Co.*, 41 I. C. C. 414.

But where there are two descriptions equally appropriate, the shipper is entitled to take the one upon which the lower rate applies.

*Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co.*, 19 I. C. C. 65.

*St. Louis B. F. Co. v. Virginian Ry. Co.*, 24 I. C. C. 360.

*United Verde C. Co. v. Pennsylvania Co.*, 48 I. C. C. 663.

*National Elevator Co. v. Chicago, M. & St. P. Ry. Co.*, 246 Fed. Rep. 588.

And the repeated insistence of the Government that such evidence imported fraud on the part of the defendant, in the face of the fact that the Interstate Commerce Commission itself had in its decision (which was received in evidence) in the *National Refining Co. case*, 23 I. C. C. 527, required the establishment of rates on substantially

the same commodity on the same basis upon which the carriers established the unrefined naphtha rates, could not but be highly prejudicial.

The next group of assignments of error (*Rec.*, pp. 1546-1550, 1591, 1595, 1596) ruled upon by the Circuit Court of Appeals (*p.* 1690) was as to the admission of evidence to the effect that defendant's subsidiary concurrently shipped the same commodity to defendant at Pittsburgh, Pa., under the designation "gasoline".

The evidence further showed that there were no unrefined naphtha rates to Pittsburgh, and consequently there was no choice of terms.

The evidence was therefore without probative force whatever, as held by the Circuit Court of Appeals and as shown by the foregoing authorities.

The next group of assignments of error (*Rec.*, pp. 1569-1588, 1640-1645) ruled upon by the Circuit Court of Appeals (*p.* 1690) was with respect to the admission of a large mass of testimony concerning the practice of numerous other shippers (in no wise affiliated with the defendant) in shipping condensates produced by them as "gasoline", when the evidence showed that in such instances there was no choice of descriptions available. It further was not shown in some instances whether the material shipped by such other shippers was the same, or even substantially the same, as that shipped to defendant; and in the other instances it was shown that it was in fact different, and in some cases quite substantially so.

This evidence not only violated every element of the *res inter alios acta* rule—and was pure hearsay, so far

as the defendant was concerned—but it lacked even the claim to the quality of admissions made as to the evidence dealt with in the two preceding groups of assignments of error.

The next two assignments of error (*Rec.*, p. 1663) ruled upon by the Circuit Court of Appeals (*pp.* 1690, 1691) were: (*a*) statements by Government counsel in argument that the scientific institute with which two of defendant's expert witnesses were connected was founded by defendant's president, concerning which there was no evidence of the kind in the record, and which, as the Circuit Court of Appeals said,

“could have been made for no other purpose than to prejudice the jury against”

those witnesses (*Rec.*, p. 1691); and (*b*) argument to the jury by Government counsel to the effect that the jurors had a pecuniary interest in the verdict, in that they would be required to contribute to the deficit from government operation of railroads which would be increased by the alleged fraudulent conduct of defendant.

It is not uncommon for prosecutors to go outside the record or make misstatements in the course of argument concerning some of the facts in issue, and such action may not always be considered necessarily prejudicial. But when, as here, the matter in question has no relation to the issues, and the conduct could have no other possible purpose than an attempt to prejudice the jury, the prosecution ought not to be heard to argue that such course was not in fact prejudicial. Surely in making such statements the prosecutors must have believed they

would have been efficacious in prejudicing the defendant, else why would they have indulged in them? Can the Government with any sincerity argue to this Court now, that, although the result sought by the prosecutors was accomplished, it was not contributed to by that which those prosecutors designed should contribute thereto?

The remaining assignment of error (*Rec.*, p. 1691) ruled upon by the Circuit Court of Appeals (*Rec.*, p. 1691) was the refusal to instruct a verdict for the defendant.

When the case is stripped to the legitimate evidence in it, it is scarcely arguable that a verdict ought not to have been instructed. The evidence erroneously admitted constitutes probably more than three-fourths of the whole. Apparently the prosecution considered it not only legitimate evidence, but necessary, else why would it have so insistently urged it upon the Court, over defendant's objections? If the Government *then* thought such evidence was necessary to make out its case, how can it argue *here* that the Circuit Court of Appeals erred in holding that without this great mass of evidence there was insufficient to go to the jury? The Government's petition itself concedes almost unreservedly that there were errors warranting a new trial (*Petition*, pp. 8, 9). What other judgment could be entered than that contained in the mandate of the Circuit Court of Appeals—a new trial?

“But if, in point of law, the judgment ought to be affirmed, it is the duty of this court to affirm it (6 Cranch, 268). We cannot, with propriety, re-

verse a decision which conforms to law, and remand a cause for further proceedings."

*Benney v. Chesapeake & Ohio Canal Co., 8 Peters, 214.*

### CONCLUSION.

It is submitted that either the motion to dismiss or that to affirm should be granted.

Respectfully submitted,

R. L. BATTS,

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*Attorneys for Respondent.*

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WM. R. STANBURY  
CLERK

IN THE

# Supreme Court of the United States

No. 40,  
October Term, 1924.

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UNITED STATES OF AMERICA,  
*Petitioner,*  
*vs.*

GULF REFINING COMPANY,  
*Respondent.*

---

## BRIEF FOR RESPONDENT.

---

H. L. STONE, JR., Pittsburgh, Pa.,  
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IN THE  
SUPREME COURT OF THE UNITED STATES  
No. 40,  
OCTOBER TERM, 1924.

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UNITED STATES OF AMERICA,  
*Petitioner,*  
*vs.*  
GULF REFINING COMPANY,  
*Respondent.*

---

**BRIEF FOR RESPONDENT.**

**Statement.**

After this case was brought here by writ of certiorari upon the Government's petition, the respondent moved to dismiss the writ or affirm the judgment of the Circuit Court of Appeals. With these motions the respondent filed its argument, in which it contended that review by certiorari of a judgment of the Circuit Court of Appeals awarding a new trial in a criminal case, was not within the appellate jurisdiction of this Court, or, even if within such jurisdiction, that the writ had issued improvidently on the erroneous representations contained in the Government's petition, and, in any event, even though the writ properly issued, the judgment of the Circuit

Court of Appeals directing a new trial should be affirmed because of the numerous errors committed on the trial.

In response to these motions the Solicitor General filed a brief on behalf of the United States, which he announced would stand as the Government's brief on the merits as well. The Director General of Railroads was also permitted to file a brief as *amicus curiae*.

The Court reserved further consideration of the motions to dismiss or affirm until the hearing on the merits.

## PART I.

### Jurisdiction.

The Government's whole case is dependent on one single issue of fact; that is, whether the material shipped to respondent was gasoline, and not properly describable as unrefined naptha as contended by respondent.

Finding numerous other errors, the Circuit Court of Appeals also held that the District Court erred in refusing to grant the respondent's motion for an instructed verdict, upon the ground that, stripped of a mass of evidence erroneously admitted, the conclusion was inescapable that the material in question could not properly be called gasoline.

Laboring under the erroneous assumption that the Circuit Court of Appeals had directed that the indictment be dismissed, instead of that a new trial be awarded, the posture of the Government on its petition for the writ was that, conceding the other errors, the Circuit Court of Appeals was warranted in "at most remanding the case for a new trial" (*Petition, V*). On the error of this assumption becoming evident, the position of the Government now is, first, that there were no errors committed on the trial, and second, even if there were any such errors, that at least the conclusion of the Circuit Court of Appeals that the material in question could not

be called gasoline is erroneous in fact, and it at least should not be allowed to stand, because it is contended that the Government will be prejudiced in other cases and in other matters if the *opinion* of the Circuit Court of Appeals on this point is allowed to stand unreversed.

The respondent does not concede that the Government will be prejudiced in the more important respects contended in the petition, which matter will be considered hereinafter, but, to the extent that it is true that the Government will be prejudiced in other cases by the opinion of the Circuit Court of Appeals, it follows that in asking this Court to pass upon this issue of fact and reach a contrary conclusion to that reached by the Circuit Court of Appeals the Government is seeking not merely to remove such prejudice, but instead to create a situation of prejudice against respondent and certain individuals in such other cases.

As therefore the principal ground upon which the Government contends the writ should be retained and the opinion of the Circuit Court of Appeals reviewed depends upon the Government's contention that the Circuit Court of Appeals erred in holding that the material could not properly be called gasoline, the Government in its brief has elaborately abstracted the evidence tending to substantiate its contention that the material should be called gasoline; which renders it necessary for the respondent to deal with this issue of fact under this point of the brief instead of in its normal place.

There is no dispute between the parties as to the identity of the substance shipped. The dispute is as to its proper name.

The material in question is the liquid condensate (blended or unblended, as hereinafter described) of a gas flowing from oil wells called casinghead gas. The condensate is commonly called casinghead gasoline.

At the time the shipments moved there were in force rates on "gasoline" and also on "unrefined naphtha", the

latter substantially lower than the former; but none under the description "casinghead gasoline". The material was shipped to respondent under the designation "unrefined naptha", and the rate applicable thereto paid.

The indictment alleges that gasoline was transported, and in the District Court the Government attempted to prove that the material is in fact gasoline. The respondent, on the other hand, offered proof that the material is not gasoline, and, further, that the term "unrefined naptha" is an appropriate description for it.

When the gas is liquefied by compression the condensate has a vapor tension in excess of 10 pounds to the square inch.

Under what are known as the Safe Transportation Regulations of the Interstate Commerce Commission and the carriers, liquid condensate having a vapor tension in excess of 10 pounds to the square inch cannot be shipped in ordinary tank cars, and must be shipped in special equipment. In order, therefore, to bring the condensate to below ten pounds vapor tension, so that it may be shipped in ordinary tank cars, it was the practice of the respondent's subsidiary at one of its plants to subject the condensate to a process called "weathering", which consists in heating it, and thus driving off the lighter particles, and at the other two plants to reduce the tension of the condensate by blending with it naptha shipped from the refinery at Port Arthur to the casinghead plant for that purpose. The naptha is a substantially heavier product than the condensate, and by the addition of one-third of the heavy naptha to two-thirds of the condensate the blend was brought to a vapor tension just under 10 pounds. The term "naptha", as last used, is the specific name of one of the products of the distillation of petroleum. The word "naptha" however is also a generic name, embracing all those fractions and their products arising from the distillation of petroleum which are lighter than kerosene. In its generic use the



term "naptha" therefore embraces naptha (specific), benzine and gasoline, as well as the mass of material from which they are extracted.

None of the foregoing facts are disputed. The dispute hinges on the proper definition of the word "gasoline" and the propriety of calling the material "unrefined" naptha.

Conceding, for the purposes of the argument under this point, that all the proof offered by the Government was properly admissible, it amounts in substance to this:

(1) On Direct. That before the establishment of the unrefined naptha rates respondent's subsidiary shipped to it the identical commodity described as gasoline, and that respondent's traffic manager wrote letters to the carriers during such preceding time requesting the establishment of rates on gasoline to cover the movement of the commodity;

(2) That coincident with shipments to Port Arthur under the designation "unrefined naptha", other shipments were made to Pittsburgh—to which point there were no unrefined naptha rates—of the same material described as "gasoline".

(3) That some employees around the casinghead plant were accustomed to calling the material "gasoline";

(4) That other shippers of material, in some instances identified as being substantially similar to that shipped to respondent, in other instances the material not particularly identified as being similar, and in still other instances material shown to be decidedly different, called it "gasoline" and shipped it under the designation "gasoline"; there being no unrefined naptha rates in effect to the points to which they shipped;

(5) That still other shippers shipping substantially the same material, where there were unrefined naptha rates available, had shipped it as "gasoline";

(6) That certain employees at respondent's refinery had been accustomed to designate the material as "Kiefer gasoline" or "Kiefer gas" in certain records, which records had been erased and mutilated prior to their production before the grand jury.

(7) And extracts from the Interstate Commerce Commission's safe transportation regulations, permitting during a part of the period of time the use of the description "gasoline", and during the balance of the time requiring the use of one of the descriptions "gasoline", "casinghead gasoline" or "casinghead naptha" (which last description respondent did use in compliance with the rule, in addition to the term "unrefined naptha").

In opposition to this evidence the defendant called six expert witnesses—five of them unconnected with it, and including some of the most eminent petroleum engineers in the world—all of whom testified unequivocally that the material in question was not gasoline in any proper sense of that word. They gave varying definitions of the word "gasoline", but all in substance agreed that it was a product of petroleum within certain ranges of boiling points, suitable for every-day use for carbureting or vaporization purposes, such as operating an automobile, gasoline stove, or launch; and that this material, on account of a preponderance of so-called lighter ends, and because of its volatility, and other objections mentioned, would not comply with any specification for gasoline and would not be suitable for such ordinary every-day use. They testified further that in order to make the material into gasoline it was customary to send it to a refinery—as was respondent's custom—in order that its boiling points might be corrected by blending it with heavier material; that blending was an important part of the art of refining; that the material unquestionably came within the generic description "naptha", and that since it was necessary to subject it to further blending—a refining process—the designation "unrefined naptha" was

entirely appropriate. It was also shown by one or more of them that a certain standard work on the technology of petroleum used the term "unrefined naptha", and defined it as being naptha within certain boiling-point limits, within which limits this material is embraced. They also testified that they had made certain tests with the material and that it refused absolutely to budge an ordinary motor car under ordinary circumstances.

The respondent further offered to prove, but was not permitted to do so, that it was contrary to the laws of Oklahoma to sell the material as gasoline and it was not treated as such for taxation and inspection, and that it was contrary to the laws of Texas to sell, ship or for any other purpose to describe this material as gasoline. Respondent also offered to prove, but was not permitted to do so, that the only other shipper who shipped the material as gasoline, where unrefined naptha rates were available, had, after discovering these rates, filed suit for the recovery of the difference between the gasoline and the unrefined naptha rates, and that that suit was then pending undecided.

Respondent also showed that it had never sold any of the material as gasoline, but that all of it shipped to Port Arthur was there blended with other materials to make gasoline.

The Government was then allowed to call in rebuttal two petroleum engineers, both of whom testified that the material was gasoline and could not appropriately be called "unrefined naptha". The first admitted, however, that he used the word "gasoline" as a generic word interchangeable with "naptha" in its generic sense, and he admitted that the material was unfinished, needing correction of its boiling points before being usable for ordinary purposes of gasoline, and that, while he himself could so use it, he would not trust it to his wife for use in place of gasoline. He also admitted that "naptha" would be a proper designation, but based his contention

that it could not be called "unrefined naphtha" on the ground that he considered the material pure, that is, free of impurities, and that he construed the word "refining" as being limited to the removal of impurities. Under this construction of the term, a crude petroleum oil, free of impurities, would be refined oil—a patent contradiction in terms.

The other Government expert took the same position in regard to the meaning of the word "unrefined", but he was forced to admit the authorship of an article prepared by him, and issued as an official bulletin by the Bureau of Mines, stating that the condensate was too volatile and dangerous and not suitable for use as gasoline.

During the trial joint tests were conducted by the experts of both sides, in an effort to see whether the material would operate a car satisfactorily; and in three out of the four tests that utterly failed, and in the fourth it succeeded in operating a car, only under the most favorable circumstances, long after midnight, at very low temperature, when the volatility would be at its minimum.

The foregoing is the substance of all the evidence in the case, and it is submitted that the conclusion of the Circuit Court of Appeals was clearly right.

As previously stated, substantially the whole issue on the trial was whether or not the material should properly be called "gasoline", and this was necessarily so because the indictment alleges that the material shipped was gasoline; and proof that it was anything else, regardless of the rates upon which it ought to be shipped, would clearly be a fatal variance.

The Director General, however, in this Court, for the first time attempts to assert a new theory of the case, supported by a disingenuous argument. His position is, in substance, that, assuming the material is not actually gasoline, nevertheless the Interstate Commerce Com-

mission, in its regulations governing the safe transportation of dangerous or explosive articles, has provided a rule which during a portion of the time covered by the indictment provided that the material *may be* shipped as "gasoline" and during the remainder of the time *must be* shipped as "gasoline", "casinghead gasoline" or "casinghead naptha"; that these rules, as required by the Commission, are published by the carriers in their classifications; that these classifications are filed with the Interstate Commerce Commission as tariffs, and that accordingly they become controlling descriptions for rate purposes. In other words, his contention is that, supposing for reasons of safety the Interstate Commerce Commission had promulgated a rule requiring that kerosene *should be* billed and placarded as "gasoline" or *might be* billed and placarded as "gasoline", the publication of such rule by the carriers in their classifications would automatically make applicable the gasoline rate on kerosene, although there might be rates specifically published applicable to kerosene. If the contention had any merit, it is obvious that the indictment would not fit. It would have been necessary to allege that the material shipped was the liquid condensate of casinghead gas below 10 pounds vapor tension; that by reason of the regulation of the Commission the rate applicable thereon was that applicable to gasoline, and that the defendant had paid a lesser rate. But the contention is without merit in any event.

As pointed out in the argument in support of the motions to dismiss or affirm (*pp. 26, 27*), these very same regulations contain another rule requiring that all articles

"must be properly described by the shipper in his shipping order and bill of lading under the specific or general name provided for the description of such freight by the carrier's classification and tariff governing."

The further contention of the Director General, that the efficacy of the safe transportation rules, as such, will be destroyed if the opinion of the Circuit Court of Appeals is not reversed, is utterly without merit, and can scarcely be made with good grace by the Government in the face of the knowledge it possesses that there are still pending untried in the District Court other indictments expressly charging violation of the Safe Transportation Regulations in regard to the same matters herein involved, upon which indictments there will be abundant opportunity to hold the respondent accountable, if these rules have in any wise been violated.

In their efforts to find material to support the contentions which they claim warrant the review of this case by certiorari, the Solicitor General and the Director General in their briefs have given such erroneous, garbled and fragmentary statements of the evidence that it becomes necessary to review it completely under this point of respondent's brief instead of in its normal place.

The facts shown by the evidence are as follows:

Petroleum oil is a mixture of various hydrocarbons. In the process of refining, it is separated into various fractions, the process consisting in the segregation of those hydrocarbons of certain boiling points or gravities which go to make up the respective finished products of petroleum, such as gasoline, naphtha, benzine, kerosene, gas oil, fuel oil, lubricating oil and waxes. The hydrocarbons which are lighter in gravity than those used to make kerosene (being the ones which are used to make gasoline, naphtha, and benzine) are collectively called—both scientifically and commonly—the naphtha fraction of petroleum oil. Naphtha is a generic name, covering finished gasoline, naphtha and benzine, as well as the materials of which they are composed; and it is also a specific name of the narrower subdivision of itself used for making paints, varnish, and for other purposes (*Rec.*, pp. 587-589, 691, 700, 710, 711, 887).

Coincident with the flow of oil from a well, a certain gas comes off, commonly called casinghead gas (*Rec.*, p. 186). This gas contains a quantity of light hydrocarbons identical with the lighter hydrocarbons embraced within the naphtha fraction of petroleum oil, but in vapor form (*Rec.*, p. 887). Whether this gas comes off, and is a part of, petroleum oil, is not known to science; there being two theories: one that it does and is, and the other that the gas comes from other sources, but occupies the same fissures or chambers in the earth that are occupied by the petroleum oil, and consequently escapes with it (*Rec.*, p. 890). It is scientifically known that naphtha gas may and does arise from sources entirely independent of petroleum oil (*Rec.*, p. 691). For many years, this casinghead gas was wasted, although it was recognized that the hydrocarbons contained in it could be utilized in the making of gasoline the same as the similar hydrocarbons contained in petroleum oil (*Rec.*, p. 690).

After considerable experimentation, a satisfactory process was evolved for the capture of these hydrocarbons and their reduction to liquid form by compression of the gas (*Rec.*, p. 690). This led to the erection in the State of Oklahoma by the Gypsy Oil Company (affiliated with the defendant) of what are known as compression casinghead plants, the first constructed beginning in 1913, being rapidly followed by others, until there are now many compression plants (and plants using other processes, not here important) employed in the process mentioned.

The liquid condensate of the gas (quite commonly called "casinghead gasoline") is extremely volatile, and the greater portion of it would, unless confined, very quickly return to a state of vapor (*Rec.*, p. 591). It is not practically usable, nor is it the same, as the commodity commonly known as gasoline used for running motor cars, gasoline launchers, gasoline stoves, etc. It will not run a car satisfactorily (*Rec.*, pp. 695, 698, 884, 886),



and frequently will not run it at all (*Rec.*, pp. 695, 857, 858), and the Government's expert witness testified that he would not trust his wife to attempt to run a car with it unless he was with her (*Rec.*, p. 883) and that it is not suitable for general use by "common people" as distinguished from an expert like himself (*Rec.*, p. 883).

The commodity commonly known as "gasoline" consists of an aggregation of lighter hydrocarbons within a limited range (determined by varying standards prescribed by government regulations, state laws, purchaser's specifications or the individual manufacturer's own specifications, and other conditions), which upon fractional distillation will begin to boil at a certain temperature, certain percentages of which will distill over at certain other temperatures, which will not completely distill over short of a certain maximum temperature, and which will produce a certain minimum recovery after distillation. The most important difference between it and the so-called casinghead gasoline—or liquid condensate of casinghead gas—is that the latter is composed principally of the lighter gravity hydrocarbons only, and does not include sufficient of the heavier hydrocarbons, embraced within the range compassed by gasoline, as a consequence of which its initial boiling point is very much lower than that of gasoline, and its "end point" likewise substantially lower, and the recovery after distillation much less (*Rec.*, pp. 691, 699, 700, 887, 889).

Fractional distillation for the purpose of testing a material consists in running a sample of the material through a small still known as an Engler flask.

The War Department specifications—which are the same as defendant's own standard—require that before material will pass as gasoline it must meet the following specifications:

Upon distillation its initial boiling point shall be at not less than 140 degrees Fahrenheit; not less than 20% must be distilled at 221 degrees; not

less than 45% at 275 degrees; not less than 90% at 356 degrees; and must be completely distilled over—the flask being dry—at 428 degrees; and, of special importance, there must be a recovery of not less than 95% of the material, that is, there must not be a loss upon distillation of more than 5% of the material distilled. In addition to these requirements, it must be free from odor, and must be what is technically known as water-white in color. Water-white color is determined by an instrument known as the Sayboldt Chromometer (*Rec.*, pp. 290-312, 730, 768).

A product substantially identical with the liquid condensate occurs in other ways. In the course of distillation at a refinery, these same lighter hydrocarbons vaporize, and would escape but for the fact that they are recaptured and put through a compression plant and liquefied; this condensate being called “still gas gasoline.” This is, of course, likewise not a completed marketable gasoline, but is run on through other processes and blended into gasoline materials (*Rec.*, pp. 700-1, 838, 841-2). Again, a like vapor arises in large crude oil tanks on tank farms, and it is sometimes captured and condensed. Aside from this, there is a product substantially similar, but not identical, which is variously known as “lighter ends”, “tops”, “skimming”, and perhaps other names, consisting in naphtha hydrocarbons driven off crude oil by the application of heat in what are known as “skimming” or “topping plants”. These tops while within the range of the naphtha fraction contain a somewhat larger percentage of the heavier hydrocarbons embraced therein than does the liquid condensate of casing-head gas. Topping is practically a crude initial step in refining by a plant not equipped to go further in the processes of refining, which generally sells or ships the tops to a refiner, where they are further processed in the making of gasoline (*Rec.*, pp. 592-3, 615-618, 693).

The liquid condensate is not sold for use as or in place of gasoline; but, so far as it is dealt in commercially, is sold to refiners or others, to be used by blending with heavier hydrocarbon of the naphtha fraction, and to thus produce gasoline (*Rec.*, pp. 693, 854-5). While the liquid condensate in the state in which it comes from the compressors can be shipped in specially constructed insulated tank cars, the general practice is to reduce its vapor tension to not exceeding 10 pounds per square inch, either by a process known as "weathering" (consisting simply in allowing the more volatile portions to escape), or by a process known as "blending" (which consists in the addition of crude naphtha or some other heavier petroleum distillate), or both weathering and blending to such extent as will reduce the vapor pressure to 10 pounds and act as a sort of carrier or sponge to prevent loss by escape of the gas, and at that pressure it is shipped in ordinary tank cars (*Rec.*, pp. 194-196, 202-204, 213, 214, 237, 591, 859-60). This blend of liquid condensate and naphtha is more nearly identical in the range of hydrocarbons embraced within the tops above described than is the unblended liquid condensate (*Rec.*, p. 693). It is possible, however, to blend the liquid condensate with a sufficient additional quantity of naphtha to make a product somewhat similar to refinery-made gasoline, and this is done to some extent, and the product sold as gasoline (*Rec.*, pp. 695, 743-6).

In the beginning, the Gypsy Oil Company tried this method, and the defendant sold the product as "blended gasoline" (*Rec.*, pp. 555, 556). On account, however, of excessive loss and the unsatisfactory results of the use of this material and because the sale of it was injuring the reputation of its standard refinery-made gasoline, the company soon discontinued any effort at the casinghead plants to so blend the liquid condensate as to make a product salable as gasoline, and, instead, began shipping the liquid condensate blended sufficiently only to reduce

its vapor tension to 10 pounds (or weathered to that point) to its Porth Arthur refinery. The product has ever since at this refinery been expertly blended with and into other materials in such quantities and under such conditions as to produce a product meeting the requirements of commercial gasoline (*Rec.*, pp. 678-680). In some cases this was not possible and the material was distilled.

Blending is one of the processes of the art of refining petroleum oils applied not only to gasoline, but lubricating oils and other products, and is a delicate and expert operation (*Rec.*, pp. 689, 690, 691, 743-7). Sometimes the liquid condensate when it arrives at Port Arthur is found to be "off color" or to contain a deleterious quantity of sulphur; in either of these cases it is necessary to subject it to other processes, wherein it becomes simply mingled with and loses its identity in other materials undergoing such processes in the regular course of manufacture of gasoline by the refinery (*Rec.*, pp. 255-6, 860). If, however, it is free from these objectionable features, as is most commonly the case, it is possible to blend it with and into gasoline with a recovery in excess of 95%, purposely so made at the refinery in order to be able to accommodate the injection into it of quantities of the liquid condensate running from 5% to 25% of the whole. The operation of blending is performed either in tanks, or in ships' holds so constructed as to permit of the operation. It consists in the mixing, by a man of long experience guided by the distillation tests, of such quantities of the two materials as will meet the specifications. After they have been combined, a distillation test is made to ascertain whether the operation has resulted in producing a material meeting the specifications, and, if not, in what respect the blend is deficient. Naturally the operation rarely produces the required result on the first attempt, and it is usually necessary to add more of one or the other of the materials and again test; and to continue

the operation of adding and testing after each addition until the specifications are met. Ordinarily it takes about three attempts before success (*Rec.*, pp. 254-60, 312-23, 582-602).

A very small quantity of the liquid condensate (blended to 10 lbs. vapor pressure) was also shipped to a blending plant owned by the defendant at Pittsburgh, Penna., where it was utilized by blending it with other material obtained at that point from other sources.

The "blended gasoline" which was shipped commercially in the earlier years was described and shipped as "gasoline"; and it is conceded by the defendant that that word was and can still be applied to this material without impropriety. When the material which was shipped to Port Arthur, however, first began moving, it also was shipped and described as "gasoline," there being no classification or commodity rating expressly covering it, and gasoline being the nearest analogous classification thereto.

Inasmuch as the material being shipped to Port Arthur was in an unfinished state—and being sent there for the purpose of undergoing further refining process—the defendant besought the carriers to lower their gasoline rates between the points involved or establish what is commonly known as a "milling-in-transit" basis to cover the movement, such as is commonly established by carriers to cover partially manufactured articles stopped to be finished in transit. But the carriers were unwilling to establish that basis (*Rec.*, pp. 559-566).

On May 7, 1912, the Interstate Commerce Commission rendered its decision and report in a case then pending before it, entitled *National Refining Company v. Missouri, Kansas & Texas Railway Company, et al.*, (23 I. C. C. 527). That case sought a determination as to the rate properly to be applied on tops or lighter ends shipped from a skimming plant at Muskogee, Oklahoma, to a refinery at Coffeyville, Kansas. The report of the

case shows that the carriers had but two rates: one applicable to crude oil, and the other applicable to refined products of petroleum oil; the second being substantially higher than the first. The controversy was as to which of those rates was applicable. The Commission found that the material "was not what is commercially understood as a refined product of petroleum oil," and that the refined rate was not applicable and would be unreasonably high; and it prescribed as a basis to cover the unfinished product an intermediate rate based on a differential 2c per 100 pounds higher than the crude oil rate. In the course of its opinion the Commission observed the fact that there was no tradè name or commercial designation for the commodity, and directed the carriers to establish the new rates, giving the material involved such description as would not lend itself to misunderstanding or afford opportunities for misbilling (*Gov. Exhibit 99, Rec., pp. 1378-83*). In compliance with the order of the Commission in that case, the carriers established the rate on the basis ordered, giving the commodity the name "Unrefined Naphtha" (*Rec., pp. 567-574*). This defendant was in no wise interested in, nor had anything to do with, that case.

Following the establishment of this description and rates, the carriers in 1916 established rates on the same basis, *i. e.*, a differential 2c over the crude oil rate from Carterco, Oklahoma, to Baton Rouge, Louisiana, to cover a movement of tops between those points from the plant of the Carter Oil Company, using the description "Unfinished Naphtha" (*Rec., pp. 615, 618*). Upon the publication of these rates in this contiguous territory, the defendant requested the carrier to establish rates upon the same basis and description to cover its traffic between its shipping points. The carriers were requested to publish them northbound from Port Arthur (and Fort Worth, not here involved) to Kiefer to cover the blending naphtha shipped north, and southbound from Kiefer

to Port Arthur, covering the liquid condensate unblended, or blended only to the extent necessary to meet the shipping requirements and serve as a carrier of the liquid condensate (*Rec.*, pp. 559-566, 567-574).

After the usual delay incident to such matter, the carriers published their tariffs on the differential basis sought, effective December 2, 1916. In doing so, however, they used the description "Unfinished Naphtha" northbound and "Unrefined Naphtha" southbound (*Rec.*, pp. 559-566, 567-574). This difference was not made at defendant's request, and is an unimportant distinction (*Gov. Exhibit 98, Rec.*, pp. 694, 695, 1377). It was testified by all the defendant's expert witnesses that the name "unrefined naphtha" was a strictly appropriate technical description of the material shipped southbound, and which is the subject of this indictment, and it was even conceded by the Government's own expert witnesses that the material involved is properly embraced within the generic name "naphtha," and it was admitted by them that it was in an unfinished state, requiring correction of its boiling points before it would become the material known and sold as "gasoline" (*Rec.*, pp. 885, 886, 888, 889). The carriers at the time made no effort to ascertain the exact technical character of the material; the considerations moving them being that it was an unfinished material, and unfinished materials, under ordinary custom with them, being accorded lower rates than the unfinished product, and the fact that the Interstate Commerce Commission had established the 2c differential basis in the *National Refining Company case*, and that they had followed that basis on the Carterco-Baton Rouge movement (*Rec.*, pp. 567-574). The Gypsy Oil Company notified the agent of the initial carrier that as soon as the tariffs became effective they would begin shipping the material theretofore described as "gasoline" under the description "unrefined naphtha" at the new rates; and this was done (*Rec.*, pp. 550-557). The shipping



orders all bore upon their face a stamp indicating that there had been applied to the car a caution card required and permitted (by certain regulations of the Interstate Commerce Commission affecting safe transportation of explosive and inflammable articles) to be placed only upon cars containing this material (*Rec.*, p. 230). It continued to be shipped upon this description and the rate applicable thereto for over two years, when agents of the Bureau of Criminal Prosecution of the Interstate Commerce Commission, conceiving that "gasoline" was a more appropriate description of the material than "unrefined naphtha" caused this prosecution to be instituted.

Doubtless upon the foregoing statement—every particle of which is supported by undisputed evidence—this court is curious as to why such a prosecution should have been instituted, in the first instance, and, in the second, how a conviction could have resulted. We can but speculate upon the answer; as to the first, that at the time the representatives of the Commission determined upon a prosecution, they were laboring under mistakes both of fact and of law. We say this as to the facts, because of a determined effort upon the part of the Government at the trial to prove that the material was not in fact blended at Port Arthur, but marketed as "gasoline," failing to prove which on the trial it shifted to a contention that blending is not a process of refining; in each of which respects the evidence clearly refutes these ideas (*Rec.*, pp. 588-91). And as to the law, because of the erroneous interpretation thereof which they were then urging upon the Supreme Court in the *Lehigh Coal & Navigation* case (250 U. S. 556). And we think the conviction was possible only by reason of the improper admission and rejection of evidence and procedure assigned as error and hereinafter considered.

Upon the trial the Government made no effort in its direct case to prove by direct evidence that the material

in question was and in fact is gasoline. Instead, its proof consisted, first, in showing (on the theory of admissions) the fact (conceded by defendant) that previous to the establishment of the unrefined naphtha rates and also upon the shipments to Pittsburgh (to which point no unrefined naphtha rates were ever established) the material had been described as "gasoline." Included in this showing were those shipments during the early years of operation which were blended sufficiently to be sold commercially as "blended gasoline," and which the defendant conceded ought to have been, and was, shipped upon the gasoline rates. This evidence was all received over the earnest objection of defendant as to its admissibility on the ground that they did not constitute admissions, because the circumstances were vitally different in the most material respects, namely, that in the one case the material shipped was entirely different, and, in the other case, that there were no unrefined naphtha rates which could have been used. The second class of evidence offered by the Government consisted in the testimony of employees of casinghead plants not owned by defendant to the effect that they were accustomed to calling and shipping as "gasoline" the material produced at their plants; this (1) without any showing that the material shipped by them was similar in the degree of blend (a distinction which the defendant insists would be absolutely determinative of whether the material ought or ought not to be called "gasoline"); and, (2) in some cases, with a showing that the material was in fact of a different blend (even to such extent as that it ought to be called "gasoline"); and, (3) without any showing that there were any unrefined naphtha rates available; and, (4) in some cases, a showing that there were not any such rates available. This evidence was likewise admitted over the protest of the defendant. The third class of evidence (directed to the discrimination counts) offered by the Government consisted in evidence of shipments from casing-

head plants located at Jenks, Oklahoma, to Port Arthur, Texas, alleged to be of similar material to the Texas Company billed and described by the shippers as "gasoline," and upon which the Texas Company paid rates applicable to gasoline. The court declined to allow the defendant to show with respect to this evidence that the Texas Company had thereafter instituted suit then and now pending in the United States District Court in another jurisdiction, for the recovery of the difference between the unrefined naphtha rate and the gasoline rate upon the ground that the latter had been improperly applied. The fourth class of evidence consisted in a showing by the Government of certain lead pencil records in books kept by laboratory boys at Port Arthur, in which they had, up to about April, 1917, entered a record of tests of the material, describing it in some instances as "Kiefer Gasoline," in some instances as "Kiefer Gas," and in others as "Kiefer," which descriptions had been erased, down to the time in April, 1917, when they began to use the description (in these books) "Unrefined Naphtha." Also certain carbon copies of statements kept at the refinery, the originals of which were transmitted to the general office at Pittsburgh, upon which headings reading "Receipts of Kiefer Gasoline" had been cut off, for the months preceding June, 1917, subsequent to which these headings read "Unrefined Naphtha". This evidence was offered and permitted by the court to be introduced upon the theory of establishing intent. There was no showing as to when, where or by whom the erasures were made, other than that it was admitted by the defendant that they existed at the time the books were turned over to the Government upon the grand jury inquiry, nor any showing of when, where or by whom the headings of the statements had been cut off. But it was established that instructions had been given to all employees at the refinery, upon the establishment of the un-

refined naphtha rates, to thereafter so describe the material, and it was further shown that it was no part of the duty of the boys who made these entries to attempt to classify or describe the material, but simply to record the indicia of the physical tests of it, and it was also shown, as to the statements the headings upon which had been cut off the carbon copy remaining at the refinery, that the originals which were the actual record and on file in the main office at Pittsburgh were not mutilated, but bore the original headings. These statements were merely rendered for the purpose of intercompany accounting, having nothing to do with any classification of the material, and there was no showing whatever that the erasures or deletion were made by, at the instance, or with the knowledge or consent, of any person connected with the corporation within the scope of whose authority or employment freight rates or charges were in any wise concerned. The defendant, of course, objected strenuously to the introduction of this evidence upon the ground that it was not competent to show intent, and the further ground that evidence of intent was not admissible at the time on account of the *corpus delicti* not having been established by any competent evidence, under which circumstances its admission was highly prejudicial (*Rec.*, pp. 290, 300).

To meet this case the defendant called six expert witnesses, some of them preeminent, upon the subject of the proper description of the material. They were, Colonel George A. Burrell, a man presently president of one refining corporation and general manager of another, neither in any way affiliated with the defendant, a consulting petroleum engineer, with the degree of Chemical Engineer and of Doctor of Science, who served for ten years in the Government Bureau of Mines, during four of which he was expressly engaged upon the study and investigation of this very gas and its recovery. During the World War, he entered the army and had complete charge of the Research Division of the Chemical War-

fare Service, having over 1500 of the most eminent technical men and scientists in the country engaged in such research under his direction; he was awarded a Distinguished Service Medal for this work. The Bureau of Mines, during his service with it, published and disseminated a bulletin prepared by him upon the subject of this industry, which is one of the exhibits in this case. He is also the author of a book on Gasoline, of technical papers upon the subject, the first man successfully to analyze the constituents of casinghead gas, and a man universally recognized as a preeminent authority on the subject. He was in no respect interested (*Rec.*, p. 689). He testified that blending is a delicate expert art of refining, including the blending of this material (*Rec.*, pp. 689-691, 704, 705); that the name "naphtha" in a strict technical sense defines the light distillates from crude oil down to kerosene, and that it is also the specific name of that subdivision of itself within certain gravities used for blending, which is also known as "painters' and varnish makers' naphtha" (*Rec.*, p. 691). He defined "gasoline" as a mixture of hydrocarbons suitable for use in vaporizers, that is, such as motor cars, gasoline stoves, launches and lighting machines (*Rec.*, pp. 691, 692). He testified further that there is great confusion in the nomenclature of the petroleum industry; that the material shipped by the Carter Oil Company from Carterco to Baton Rouge, known as "toppings", was a naphtha fraction, and that it was essentially similar to the product shipped to the defendant and utilized in the same way, namely, to make gasoline (*Rec.*, p. 692, 693); that he himself sometimes called this material "gasoline", although he knew that that was not the proper name for it; that he even used that name in one of his bulletins published by the Bureau of Mines, but that he was very careful at the end of the book to state that that was not the proper name, that the material was not in fact gasoline, and that it could not be placed in that category until

properly prepared for market, and this bulletin was written in 1914 and published in 1915, long before any of the incidents the subject of this indictment occurred (*Rec.*, p. 694); that "unrefined naphtha" is an entirely appropriate and accurate name, although he would have chosen "unfinished naphtha" in preference to "unrefined naphtha", but that one is as appropriate as the other (*Rec.*, pp. 694, 695); that it is possible to blend the raw casing-head condensate to such an extent further than that to which the material here involved was blended, as would produce a product which could be used as gasoline, but that the product shipped to defendant—either the blended or the raw—was not usable to run a car; that he had taken samples of the material and made distillation tests upon it in order to be sure that it was of the same character as that shipped, and had tried it in both a Packard car and a Dodge car on the eve of the trial, and found that it absolutely would not run the cars, and that this was the result he expected by reason of his years of experience in the investigation and handling of the material, and that even during those years he had made experiments in attempting to use the material in a car, and found that it was necessary to "weather" it away until over 80% of it was lost, using only the 20% remaining to accomplish the purpose, which of course was not the same material as that shipped (*Rec.*, pp. 695-699). He had had applications from other refiners to purchase the lighter ends of his topping plant, then under construction at New Orleans, and some of the applicants had called for the material under the name "unfinished naphtha" and other under the name "unrefined naphtha" (*Rec.*, p. 699); that the material shipped to defendant could in no proper sense of the word be called "gasoline"; that it is all too volatile in character, vaporizes too readily, and has a loss on distillation around 15%, whereas any material to be reasonably regarded as gasoline should not have a loss over 5% (*Rec.*, pp. 699, 700, 702);

that the scientific literature on the subject of naphtha used the name as applying to the lighter ends of crude oil above kerosene, as a generic term (*Rec.*, p. 700); that so-called still-gas gasoline arising in a refinery is condensed, and handled and treated exactly the same as the liquid condensate of casinghead plants, and blended with heavier distillate in the same way that the material shipped is (*Rec.*, pp. 700, 701); that the casinghead condensate occupies a reciprocal relation to the heavier naphtha, in that by their being blended together both are made usable and more useful (*Rec.*, p. 701).

During the trial Colonel Burrell conducted a joint demonstration with the Government's experts, two cars being used, the defendant selecting a Packard car and the Government selecting a Pierce-Arrow car. They first filled the cars with the unblended liquid condensate, and attempted to drive from the town of Jenks to the town of Kiefer, a distance of about 12 miles, over a flat, non-hilly country, and under atmospheric conditions favorable to the use of the material. They started with the machines cold and in every way favorable to the material. The witness was in the Packard car, which ran about three-fourths of the way to Kiefer, where it stopped absolutely dead, and no amount of adjustment or persuasion could make it go. On the few light grades encountered the car lacked power; it puffed and wheezed and acted quite unnaturally, and it finally became necessary to abandon the car through inability to proceed further, after the Government's representative was given every opportunity to do anything he could to make it go (*Rec.*, pp. 797, 798). They then tried the blended material, blended to the same extent as that shipped to Port Arthur, and attempted to run from Kiefer to Tulsa. They had so much difficulty in attempting to start the car that they were about to abandon it. He testified that he never witnessed a more unsatisfactory performance of a motor car. The road was



hilly, and the car did everything that a car with a good grade of gasoline should not do; it had no power on the hills, none of which were extraordinary, and on some it would creep to the top at a speed of 2 miles per hour on low, and on the level stretches there was no speed of consequence, and it behaved abominably. They finally got to within two or three miles of Tulsa, and it again came to a dead stop. After doing their utmost to start the car, it being then two o'clock in the morning, it was finally found necessary to abandon the test and fill the car with real gasoline. They were between two and a half and three hours trying to run 12 miles. There was nothing the matter with the car, and as soon as the real gasoline was put in it had no difficulty whatever in running. On this test the atmospheric conditions were still more favorable. In the opinion of the witness, the material used would not have run the car as little as it did under less favorable conditions. The cars were public hired cars, driven by their regular drivers. Every thing was done under the immediate observation of, and every opportunity afforded, the Government experts to try to make it operate (*Rec.*, pp. 798-800).

The Government made no attempt to put on the stand any of its witnesses who accompanied the Packard car on this test, but, in order to excuse doing so, waived their previous claim that one of the witnesses they sent for the express purpose of witnessing the test was an expert (*Rec.*, p. 804).

Dr. James B. Garner followed Colonel Burrell as an expert for the defendant. He is a chemical engineer and since 1915 has been Senior Fellow of the Mellon Institute of Industrial Research (University of Pittsburgh) in charge of the Natural Gas Investigation; has been engaged since 1897 in teaching chemistry and doing consulting industrial chemical work; has made a special study of and been engaged upon research in connection with casinghead gas; is thoroughly familiar with the

scientific literature on the subject (*Rec.*, pp. 708-710). It defines naphtha, in its generic application, as that liquid distillate derived from crude petroleum, lower in boiling point than ordinary kerosene, and in its specific application as that subdivision of the naphtha fraction known as painters' naphtha or solvent naphtha. He defined gasoline in its proper technical sense as the low boiling portion of naphtha having a gravity of 76 to 82, and usable for vaporization purposes; that as a commercial term or article of commerce it is a finished product as distinguished from an unfinished product, and that nothing could be properly called gasoline which could not be used for vaporization purposes, such as running a car or gasoline stove; that he is familiar with the product shipped to defendant, and that it was in no proper sense of the word gasoline; further, that the term "unrefined naphtha" is not only an appropriate description but a very accurate description of the product (*Rec.*, pp. 710, 711). He participated in the tests made on the eve of the trial, as to which Colonel Burrell testified, and corroborated Colonel Burrell's testimony. He testified that 96% of all the materials used and called "gasoline" is used in internal combustion engines with suction carburetors; that the material called "cracked gasoline" is not gasoline at all, because it is an unrefined material; that, dependent upon its characteristics, it might be unrefined naphtha (*Rec.*, p. 712); that casinghead gasoline of the same gravity as gasoline would still not be gasoline, but fundamentally different, which would be demonstrated by plotting curves of the distillation tests of the two materials; that they vary in the relative amounts of pentane, hexane, heptane, octane, nonane, propane, butane and isobutane (*Rec.*, pp. 713, 714). He produced a chart (*Deft's. Ex. 149*) showing the difference in curves upon distillation tests even as between Jenks and Kiefer material. He testified that casinghead gasoline is not refined because it is not fit

for use as gasoline in the broad sense of the public understanding of the word "gasoline" (*Rec.*, p. 715). He made distillation tests of the material used in the experiments conducted jointly with Government experts, and gave it as his opinion that the material was unrefined naphtha and not gasoline (*Rec.*, pp. 843-846). He also accompanied Colonel Burrell in the Packard car in which the joint test was made, and testified that when the car went "dead" between Jenks and Kiefer they got some material called drip, being a heavier material, and tried mixing it in an effort to start the car, which it still would not do, although more of the material was added. He gave it as his opinion, based upon his knowledge of the literature on the subject and his experience, that the reason the material shipped was called "casinghead gasoline" was that it took the name "casinghead" from the fact of its being derived from the casinghead of an oil well, and the name "gasoline" because it could be made into gasoline (*Rec.*, p. 848). So far as the material used in the test operated at all, the car consumed about a gallon to four miles, more than double the reasonable consumption of gasoline (*Rec.*, p. 849). Even if the material would run a Pierce-Arrow car, that would not indicate that the material was gasoline, partly because of the construction of a Pierce-Arrow car, and for the further reason that he had known crude oil to actually run a car (*Rec.*, pp. 850, 851).

The next expert called by the defendant was Dr. Eugene Paul Schock, a professor, and chairman of the School of Chemistry and Chemical Engineering and head of the Division of Chemistry of the Bureau of Economic Geology of the University of Texas, with which he has been connected since 1897. The chief study of chemical engineering in the University is technology of petroleum, on account of the fact that petroleum ranks foremost in the chemical industries of the state, and the University's policy is to give special aid to

state industries; they not only have a laboratory, but they also have a small refinery. He is a member of many technical societies, and one of the prime requisites of his work is to keep abreast of current technical literature on the subject of petroleum. He is the author of a score of papers on scientific subjects. His research work embraces the casinghead industry (*Rec.*, pp. 717, 718). He testified that the name "gasoline" has always been applied to material suitable for vaporizing. Although the material now called gasoline would have been called naphtha twenty years ago, yet it has always been a material suitable for vaporization, such as stoves, automobiles, gasoline torches used by plumbers, and so on (*Rec.*, pp. 718-720). He pointed out why it is necessary that a material to vaporize properly must be composed of certain proportions as distinguished from any mixture of the constituents (*Rec.*, p. 720). He testified that "naphtha" is the proper technical name to cover collectively the lighter portions of crude oil; that gasoline is a naphtha of certain properties embraced within the term "naphtha"; that name is a proper name for any gasoline, but all naphthas are not necessarily gasoline (*Rec.*, pp. 720, 721). He is familiar with the material shipped to Port Arthur, and that it is not gasoline; that the name "unrefined naphtha" appropriately describes it (*Rec.*, p. 721). He participated with Colonel Burrell and Dr. Garner in the distillation tests, and also in the test made by the defendant's experts on the eve of the trial. He knows from the distillation tests that the material used was the same as that shipped (*Rec.*, p. 721). He corroborated the testimony of both Colonel Burrell and Dr. Garner that the material absolutely would not run either the Packard or the Dodge car upon which it was tried (*Rec.*, p. 722). The court refused to allow the defendant to introduce by him a statute of Texas which absolutely prohibits and makes criminal the calling of this material either gasoline,

or gasoline in combination with any other word—which would of course include casinghead gasoline (*Rec.*, pp. 720-727). This witness also qualified as an expert in the art of refining. He testified that blending is an essential operation in the production of at least two, and probably more, commodities obtained from a petroleum refinery; that it is an essential operation in refining gasoline, including the utilization of still gas, casinghead gas, and cracked material (*Rec.*, p. 727); that the proportions of the more volatile to less volatile in gasoline is a very important and very intricate matter; that the way it is done is, that, being governed by the materials on hand, a mixture is made by guess, then a distillation and such other tests as are necessary made of the mixture to determine when it has fulfilled requirements (*Rec.*, p. 728); that the term “unrefined naphtha” comprehends more than the material shipped, and is not limited to it alone, but embraces tops from a topping plant, or light-end distillate (*Rec.*, p. 728). He gave specifications of material which would be gasoline, as determined by fractional distillation, the same as the War Department specifications (*Rec.*, p. 730). Instead of having an initial boiling point of 140 degrees, as it should have had, the material tested began to distill at 85 degrees and its end point was 400 degrees (*Rec.*, p. 732).

The defendant next called as an expert Mr. Walter Miller, a petroleum refiner and consulting engineer with reference to petroleum refining, of Tulsa, Oklahoma. Before coming to Oklahoma he had been employed by the Tide Water Oil Company at Bayonne, New Jersey, where among his duties were experimental and research work and charge of the gasoline and kerosene department, and at the time of leaving was a member of the Manufacturing Committee, chairman of the Investigation and Research Committee, chairman of the Process-

ing Committee, assistant to the superintendent in charge of all processing work in the refinery, etc. Following that, he was general superintendent of the refineries of the Pierce Oil Corporation located in the United States. He then became manager of the Manufacturing Department and in complete charge of all the refining operations of Cosden & Company, and is still connected with that company in a consulting capacity. In connection with his work he has studied technical works, both upon chemistry and civil and mechanical engineering applied to refining and the technology of petroleum refining generally, and in the course of his work has had many opportunities to visit the plants and meet other refiners and discuss evolution of the business. He is a member of several technical societies (*Rec.*, pp. 735, 736). It has been a part of his duty in connection with his employments to decide what names should be applied to different products and apply names to new products or new divisions of old products. He has handled millions of gallons of casinghead products, and he is familiar with the analogous condensate produced from still gas. He has built compression plants in refineries for the recovery of still gas (*Rec.*, pp. 735, 736). He testified that the material shipped is not finished gasoline (*Rec.*, p. 737); that it is practically the same and goes to the same use as the still-gas condensate, which also has to be blended or weathered or redistilled in some manner the same as the casinghead condensate does (*Rec.*, pp. 737, 738). The casinghead condensate is not gasoline and not suitable for gasoline. He defined gasoline as that fraction of crude petroleum or similar products lying within the range of boiling points and other necessary physical tests which will satisfactorily and economically operate an internal combustion motor. This material will not do that. It is necessary to apply further processes to it before it will. These processes are generally

done in a refinery by blending with products of crude oil in such a manner and such proportions as to bring the material to the point where it will operate an internal combustion motor satisfactorily and economically (*Rec.*, p. 738). That is the most economical method of doing it. It can be brought to a stage where it will operate by excessive weathering or distillation; and it is sometimes necessary to treat it with acids or filter it through fuller's earth, after which it is still necessary to blend it (*Rec.*, pp. 738, 739). To weather it to such point to make it reasonably usable would result in a loss of all but 25% to 40% of the product. It is his practice with respect to blending to use 3% to 5% of casinghead condensate with other materials; this in order to procure a proper recovery and proper range of boiling points and intermediate curve points and to prevent excessive loss by evaporation (*Rec.*, p. 739). Few if any other refiners go above 10% of casinghead content (*Rec.*, p. 740). Naptha, as used in the refining business, he defines as a generic term applicable to that fraction obtained by the distillation of crude oil before the product kerosene is reached, and specifically as covering the heavier blending materials which are used in compression plants. It was the custom of the Tide Water Oil Company to call the material, both in process of manufacture and when completed, naptha, even including the material commonly called gasoline which was sold by them under the name "naptha". This is a very old concern and always used that term (*Rec.*, pp. 740, 741). The blending done by defendant at Port Arthur is a process of refining; that the name "unrefined naptha" is a proper designation of the material shipped to Port Arthur, although he might prefer to call it "unfinished naptha" or "unfinished gasoline blend", or "unfinished casinghead blend", or "unrefined casinghead blend". The term "unrefined naptha" embraces not only this ma-



terial but any naptha product which has not been completely refined ready for use, including tops and light-end distillate, and is a more appropriate name for those materials than tops and light-end distillate (*Rec.*, p. 741). It would not be practicable in this day and age for a refinery producing gasoline to operate successfully without resorting to blending as a part of its process. There is great confusion among refiners in the use of names of products, which includes applying the names of finished products to the materials ultimately to become such products (*Rec.*, pp. 741, 742). Blending at a refinery is a sort of compounding. He has known of casinghead plants which attempted to blend in the field and sell the product as a finished product, but had found it unsatisfactory. The blending which is done at a casinghead plant is a much simpler operation than the blending done at a refinery. The only object at the plant being to reduce the vapor tension to the shippable degree, whereas in the refinery the object is to reduce not only the vapor tension but other undesirable characteristics to such an extent as to make a product for use in automobile motors (*Rec.*, p. 743). It is not practicable to blend at a casinghead plant in order to make a finished marketable product, because it would require not only the heavy naptha used to blend for shipping purposes but also a large portion of the straight run products from crude oil to give a satisfactory distillation test and performance. A satisfactory blend is one where the casinghead is held down to not over 5%, and that would mean that the casinghead plant would have to have 90% to 95% of other products available, which would be obviously impracticable and uneconomical, as otherwise it would be necessary to locate the refinery at the casinghead plant, and as wells were exhausted move the refinery around from time to time (*Rec.*, p. 746). There is a much higher degree of skill and knowledge incident

to the blending done at a refinery than that done at a casinghead plant. Blending at a casinghead plant merely consists in blending sufficient to reduce the vapor tension, whereas in a refinery it includes the problem of blending for different percentages off on distillation tests, for the end point, for the initial, for the gravity, and anywhere from 5 to 14 points, and requires considerable experience and an intimate knowledge of the product being blended, and the proportions are usually determined by skilled chemists or men with long experience in the refining business (*Rec.*, p. 747).

The next expert called by the defendant was Dr. R. F. Bacon, Director of the Department of Industrial Research of the Mellon Institute of Pittsburgh (University of Pittsburgh) since 1914; a doctor of chemistry, and with two honorary doctor degrees; was connected with the Government for six years, and has been with the University of Pittsburgh since 1911, engaged in the study of petroleum. He is the author of a number of technical papers on the subject of petroleum, and co-author with Mr. Hammer of an important and comprehensive two-volume work entitled "American Petroleum Industry." He was a colonel on General Pershing's staff in France, and had charge of all the chemical work of our army in France up to the time of the armistice. He is a member of any number of technical societies, including international societies of the greatest importance. He was cited by General Pershing for his work in France. He is the author of numerous papers and scientific journals, and the holder of a number of patents in the field of chemical industry. His business and study necessarily keeps him abreast of the scientific literature relating to the subject of the petroleum industry (*Rec.*, pp. 748-750). He has made a large number of tests, both physical and chemical, and is familiar with the material shipped to Port Arthur. His definition of gasoline is

that it is a finished product that will satisfactorily run a motor car (*Rec.*, p. 750); that while there was considerable confusion in names and a practice general among refiners of calling unfinished material by the name applicable to the finished product, the name "gasoline" could not properly be applied to anything but a finished product such as would satisfactorily run a car (*Rec.*, pp. 749-752). In the Mellon Institute they have a machine for testing materials by their performance in a gasoline engine; and the witness has made many tests. With each such performance test they make a distillation test, and plot the curves, and it is by this means they know the curve of a material which is a satisfactory gasoline. They are thus able to determine by the distillation test of a material whether or not it is a satisfactory gasoline. In other words, the curves are an index to performance (*Rec.*, pp. 758, 759). He has tested casinghead gasoline and found it would not run an engine at all. Sometimes he would find one that would run in a very unsatisfactory manner. It would deliver little power, and the consumption would be very high, and it would spit and miss fire (*Rec.*, p. 760). It is possible by means of these curves to tell whether or not it is a material that will not run a car. There is a point in between as to which it will be difficult to say, but it is possible to tell whether a material will run a car in a satisfactory manner (*Rec.*, p. 760). A material that will perform satisfactorily as gasoline must have a comparatively small amount of volatile constituents and a moderate amount of intermediate and end constituents. Exhibit 140 shows two curves, one of which will not operate at all and the other very poorly (*Rec.*, pp. 761, 762). These curves were made from distillation tests of the material shipped from Kiefer and Jenks.

Dr. Bacon also participated with Colonel Burrell, Dr. Garner and Dr. Schock in the experiment that was

made by the defense experts on the eve of the trial. The distillation tests indicated that the material was not a usable gasoline. His observation of the experiment was the same as that testified to by the other witnesses, that is, that the cars refused to perform altogether (*Rec.*, pp. 762-764). The material is not gasoline. The name "unrefined naphtha" is a proper designation, although not the most descriptive one he could think of. That name comprehends more than casinghead, and is a broad term. It comprehends any naphtha that has not been brought to a finished state. Naphtha, as applied to the petroleum business, is a term covering any low boiling point product of petroleum which boils below the kerosene oil fraction. It would embrace gasoline (*Rec.*, p. 764). There is no question that blending as applied to gasoline is a part of the art of refining, and that it has greatly increased the available supply of gasoline by making usable for the purpose of manufacturing gasoline a much wider cut of naphtha than could otherwise be used (*Rec.*, pp. 764, 765). It has also made a market for the casinghead product, for which there would otherwise be little or no market (*Rec.*, p. 765). Casinghead could be weathered down to a point where it would run a motor car in a very satisfactory way, but the loss would be very large, and it would not be profitable (*Rec.*, p. 765). The blending of naphtha and casinghead does not necessarily make gasoline. If it is blended in such a way as to meet specifications, or in such a way as to run a motor car, it may be gasoline; if not, it is not (*Rec.*, pp. 768, 769). The word "casinghead-gasoline" is a compound word, and the material is different from the type of material commonly called "gasoline." A material is not refined until it reaches or is brought up to a standard. As an illustration, sulphur, although it may be 99.7% pure, is still crude sulphur, and is sold and shipped as such because it does not meet the standard for refined sulphur.

Copper, although 99% pure, is sold as base or ana copper; the question of whether it is refined or unrefined being determined by market standard (*Rec.*, pp. 770, 771). "Casinghead-gasoline" is a compound word, and the inclusion of gasoline in it no more imports gasoline than does German-silver silver, or quicksilver silver, or isinglass glass (*Rec.*, pp. 770, 771).

This witness also participated in the joint test that was made with Government experts during the course of the trial, he being in the Pierce-Arrow car. The car was cold when it started, and it ran apparently satisfactorily the first six or seven miles, then the engine began to have trouble; first it began to lack power, began to miss, and was evidently in trouble, and this trouble continued until about eight miles had been traveled, when the car stopped and the driver could not start it. It took twelve minutes before they were able to get the car started again, and during the first half mile the engine was still in trouble, threatening to stop, then picked up and ran very well until it got to within a hundred yards of Kiefer, when it stopped again, and it took five minutes to get it started again. With the Kiefer material in the Pierce-Arrow car, it was able to run all the way to Tulsa without stopping, and while it ran fairly satisfactorily, it popped a few times, and there was one hill in particular on which it performed badly, almost stopping, the driver having to throw it into second, going only six or seven miles an hour until it got to the top of the hill|. It was necessary for the driver to manipulate the air. The witness has seen crude oil operate a car more satisfactorily than this material did (*Rec.*, pp. 804, 805). The temperature was 54 when they left Kiefer and 46 when they got to Tulsa, and in the opinion of the witness it was due to this difference in temperature alone that it was possible to run the car as much as was done, and that the results would probably have been similar to what they were on the first test had the

atmospheric conditions been the same. After the joint test, the witness was positive the material was not gasoline.

All of the foregoing experts were in no way connected with the defendant.

In addition, the defendant called Mr. George H. Taber as an expert. He is vice-president in charge of the refineries and all manufacturing of the defendant. He has been engaged in the petroleum business since 1882, having been superintendent of the plants of several other companies before coming to the defendant in 1893. He had charge of the construction of the casinghead plants from the beginning, and also of operation (*Rec.*, pp. 667, 668). During the 38 years of his experience, he has given particular attention to a study of the nomenclature of the industry, which interested him more than any other part of the business. In his earliest employment it was a part of his duty to review the nomenclature used, and he originated much of it. With other companies with which he was connected he rearranged the nomenclature of the oils, giving new names to the old and names to new oils, that is, ones which had not theretofore been manufactured. He has read practically all the literature on the subject he could find, including technical books on the subject of manufacture and use, and treatises on the apparatus in the use, manufacture and test of petroleum and its products, also current trade papers, government publications, bulletins of technical societies. In 1915 he read and criticised for Dr. Bacon the work of Bacon & Hammer known as "American Petroleum Industry," which is today considered the most comprehensive and best work on the subject of petroleum (*Rec.*, p. 670). His aid in this respect was acknowledged in the preface. This work covers the entire range, from the geological part of the production to the shipping of the finished product, and to some ex-

tent their uses. In 1917 he revised the manuscript of a proposed text-book on the manufacture of petroleum for the International Correspondence School. He has recently reviewed the manuscript of a forthcoming work by Hammer & Padgett on the evaluation of petroleum and natural gas. He has written many papers on the subject. He is a member of technical societies, which bring him in contact with a wide range of subjects pertaining to the petroleum industry (*Rec.*, pp. 670, 671). The ordinary way of refining crude oil is to charge it into a still over a furnace, the fire from which boils the oil in the still and it passes over as a vapor, which in turn passes through tubes submerged in water, which condenses the vapor into liquid. Crude oil is a substance made up of a large number of different liquids, and when it is boiled the first vapor coming over partakes principally of the lighter portions of oils, and as the heat rises the product that comes over is heavier in weight and darker in color and has more body. From the beginning of the business it was customary to call all that portion of the vapor down to the point of the material used for kerosene "naphtha", and that is the generic or family name (*Rec.*, p. 671). This crude naphtha product was divided up to suit the demands of customers, which division was generally made in a steam still, which made possible a better separation than the fire still. He quoted from Peckham's census report of 1885 showing that from crude oil about 15% naphtha was produced, but about a half of one per cent was made into gasoline, the balance of the naphtha fraction being what is specifically called naphtha. "Naphtha" is the strict technical name of all the lighter oils above kerosene, and is so used in all the authoritative literature, including government publications. The gasoline of the early days was used to make gas in Springfield gas machines, and that is where it got its name. This was for years the only thing that



was called gasoline (*Rec.*, p. 672). With the advent of automobiles, there was not sufficient of this material then called "gasoline" to supply the demand, and it was necessary to go deeper into the naphtha to get a heavier material, but they called this gasoline also. As automobiles increased in number, it was necessary for the manufacturers to make the carburetors so that they would burn heavier material, until now practically the entire range covered by naphtha is called "gasoline", and to some extent some kerosene is put in. Some people call the material used in cars benzine, others naphtha, others gasoline, and others gas. The refiner has to differentiate the materials in order to know what is really desired. The same material the automobilist uses and calls gasoline is called naphtha when used for a launch (*Rec.*, pp. 672, 673). The demand for gasoline has caused the invention of what is known as the cracking process, which consists in the destructive distillation which results in breaking up the heavier oil into lighter oil (*Rec.*, p. 674). Naphtha has other sources of origin than petroleum oil. It is made from coal tar products, and there is a naphtha which comes from shale, as well as the naphtha from natural gas or casinghead gas. It is extracted from casinghead gas by a process known as the absorption process, as well as the compression process. This absorption process is a patented process, under a patent issued to George M. Sayboldt, of Bayonne, New Jersey, who is a man of international reputation of forty-three years' experience in the business; the inventor of a tester and viscosimeter; he is also the inventor of the Sayboldt chromometer, also called a colorimeter, which is the machine used for determining the color of oils (*Rec.*, p. 675). The process used for extracting the naphtha from casinghead gas by the Gypsy Oil Company is a compression process (*Rec.*, p. 676). It is not known scientifically whether the casinghead gas is

a part of petroleum or not. One theory is that it comes from rock strata where crude oil comes from, and others think it is distilled off from crude oil in the ground (*Rec.*, p. 676). That portion of crude oil which comes off before kerosene in the course of stillation is known as the "naphtha fraction" (*Rec.*, pp. 676, 677). A gas comes off incident to refining which is compressed and condensed in the same manner as the casinghead gas. It is precisely the same material as the casinghead product, and is a material that is used for blending to make gasoline (*Rec.*, p. 677). Gasoline, in a strict technical sense, is a refined distillate from petroleum of about 76° to 80° gravity, which is suitable for use in carbureting air for making a gas suitable for burning in private dwellings. Gasoline, as an article of commerce, embraces not only this, but is a combination of products of naphtha produced from crude oil, natural gas, casinghead gas, and other sources, which are made suitable for use in the general run of automobiles which use suction carburetors. It has to be suitable for such use, not a material that will run one make of car but any make of car with an ordinary suction carburetor (*Rec.*, p. 678). The material shipped to Port Arthur is not gasoline; it is unrefined naphtha, because it requires refining to fit it for the market (*Rec.*, p. 678). It is possible and some people do attempt to blend the casinghead condensate with heavier materials at the casinghead plants and market it as gasoline. The material shipped to Port Arthur, however, is not so blended, but is merely blended sufficiently to make it shipable and prevent loss in shipping (*Rec.*, pp. 678-680). Refining, as used in the petroleum business, embraces not merely purifying, but blending and all other processes necessary to bring the material to a given standard and place it in marketable condition. Silver may be refined in the same manner (*Rec.*, pp. 680, 681). The casinghead material has too

much light end in it to be of permanent character or to be used in suction carburetors, and too much light end for safety or economical use (*Rec.*, p. 682). An ordinary specification for gasoline is that there must be a recovery of 95%, while the material shipped to Port Arthur will recover but 80% to 85% on distillation (*Rec.*, p. 682). The liquid condensate, when dealt in as an article of commerce, is commonly sold to refiners for blending under a multiplicity of names, including "casinghead naphtha," "casinghead gasoline," "raw casinghead," "wild casinghead," "kerosene blend," "naphtha blend," and others (*Rec.*, p. 683). "Unrefined naphtha" is a perfectly proper designation for it, and is a satisfactory name, while "gasoline" is not. The reason for shipping the material to Port Arthur is to make it marketable (*Rec.*, p. 684).

Mr. Taber gave reference to a large number of technical works which supported his definitions of "naphtha" (*Rec.*, p. 773). These works embraced scientific works by the most noted authors on the subject, and include government publications and government patents (*Rec.*, pp. 776-782), including the Sayboldt patent, which is described as "obtaining naphtha from natural gas" (*Rec.*, p. 779). A technical paper, No. 74, issued by the Bureau of Mines in 1914, uses the term "unrefined naphtha," and gives it the same definition the witness does. Bacon & Hammer, in "American Petroleum Industry" (Bacon being Dr. Bacon, the witness whose testimony precedes this), also mentions "unrefined naphtha," and gives a definition of it that comprehends casinghead. It is the same definition as the Bureau of Mines' publication gives, namely, "those fractions that boil in a temperature up to 150 degrees centigrade equal to 102 degrees Fahrenheit atmospheric pressure," within which range of boiling points the casinghead product is embraced (*Rec.*, p. 783).

After the defendant had closed its case with those witnesses the court permitted the Government, over objection, in effect to reopen its direct case and put on two expert witnesses: one, Dr. Edwin DeBarr, vice-president of the Oklahoma State University and head of the Department of Chemistry thereof, with degrees from the University of Michigan, and professor of the state college since 1892, who testified that he had several years previously made an investigation, in the neighborhood of Bartlesville, of petroleum products; had tested out several plants, particularly cracking plants, and obtained considerable data in visiting absorption plants and refineries in the State of Oklahoma; that he had also investigated an explosion of casinghead gasoline at Ardmore; that he had made laboratory experiments and investigations of gases from various oil wells and oil from the gases from the Blackwell, Cushing and Glenpool fields of Oklahoma (*Rec.*, pp. 878-9). He testified that the product of compression plants is "casinghead gasoline"; that other kinds of gasoline are motor gasoline, casinghead gasoline, gas machine gasoline, cleaner's gasoline and many varieties, depending upon the purpose for which it is to be used; that casinghead gasoline is not properly denominated as unrefined naphtha because it is in most cases a pure, refined product; that its natural condition in the earth is refined; that the blending of it with naphtha which had been through "the usual three refinery processes" would not produce unrefined naphtha because both the products put together are refined, and that putting two refined products together is not a process of refining but simply a blending process (*Rec.*, pp. 879-80); that it would not be possible by further blending to produce gasoline; that casinghead gas is produced by a natural distillation process in the earth; that the fact that a particular gasoline was too volatile for economical uses in an automobile would not justify

calling it something else; that casinghead gasoline, while having practically the same chemical properties as refinery gasoline, has them in different proportions; that even though the product of a casinghead plant should show a recovery of but 88 on distillation, he would still call it gasoline, and that even though the product failed to meet specifications of customers for gasoline, it would not justify calling the material some other name, but that it would still be gasoline (*Rec.*, p. 880); that he knows of no scientific literature which refers to it as unrefined naphtha, though he has read extensively on the subject, nor has he ever seen it so denominated in trade journals. The only place he knows of which refers to it is the work of Bacon and Hammer (testified to by Mr. Tabor) and that does not describe casinghead gasoline as unrefined naphtha (*Rec.*, pp. 881-2); that during certain investigations he ran a Paige car part of the time on a mixture of compression and absorption product and in another case on a certain compression product, and drove a Ford car several hundred miles on a certain compression gasoline (*Rec.*, p. 882). This testimony was received over objection because of failure to identify the particular kind of compression gasoline used as similar to that produced (*Rec.*, p. 882). He admitted that the material was not suitable for "the common people to use" in a machine and would need to be regulated in its volatility for general use, although for a man like him it need not be regulated. The general public needs protection against its use, and he would not allow his wife to run it alone even if she had learned how to use it (*Rec.*, p. 883); that before the material is usable as gas machine gasoline, it would be better to have an acid treatment, and this product sells for double the price of the casinghead product and requires a great deal of care in making (*Rec.*, p. 884); that certain of the boiling points are a very substantial element as to whether the

material is usable; that when the initial boiling point is below 90 it will not start an ordinary car; it is hard to use it in a Buick but that some cars can be started by putting a few drops of gasoline in the pet cocks (*Rec.*, p. 884). The court would not permit him, on cross examination, to testify that taxes and inspection by the Corporation Commission of the state are not extended to this material as gasoline (*Rec.*, p. 885). In his direct examination he used the word refined as synonymous with pure. It was sufficiently pure for the purposes, but although a material might be pure it is also necessary in the manufacture of gasoline to correct its boiling points, which is frequently done at a refinery (*Rec.*, p. 885); that he has known casinghead to be blended into crude; that if the material was blended into crude, even though both it and the crude were pure, it would still be necessary to refine it in order to produce gasoline (*Rec.*, pp. 885-6). In the casinghead product there are undesirable materials which ought to be disposed of in order to make an economical motor fuel, but not necessarily to make it usable. This is one of the corrections of boiling points of casinghead material accomplished when it is sent to a refinery and one of the objects of sending it to a refinery. For general purposes the boiling points of casinghead are not proper boiling points for economical motor gasoline fuel (*Rec.*, p. 886). The difference in proportions of the constituents as between casinghead and straight refinery gasoline is the same distinction that determines all the naphtha products, there being a preponderance of heavier naphtha fractions in naphtha with a preponderance of lighter ends in refinery gasoline, although what was naphtha a few years ago is entirely different from what is naphtha today or even what might be called unrefined naphtha, the kerosene beginning much lower down (*Rec.*, p. 887). In casinghead, the lighter hydrocarbons are in larger proportion and the heavier in les-

ser proportion than in straight-run (refinery) gasoline (*Rec.*, p. 887). He has seen the name casinghead naphtha applied to the material in patents but was ignorant of the fact that the Interstate Commerce Commission's safe transportation regulations used it. It is a name coined in the last year or two (*Rec.*, p. 888). Naphtha is a proper designation of the lighter hydrocarbons and generally so used by writers. There is much interchangeability between the names naphtha and gasoline and extreme confusion, and it is quite generally true that people miscall the constituents of petroleum by the name of the finished product (*Rec.*, p. 888).

There could be such a preponderance of lighter hydrocarbons in the casinghead product as that it would not run a car. His recollection of Bacon and Hammer's definition of unrefined naphtha was that it comprised those naphtha fractions boiling up to 150 centigrade, and that from the testimony he heard of the material involved, it would come within that definition, and he has seen other casinghead gasoline which would (*Rec.*, p. 889); but while he calls it gasoline, many writers embrace it within the naphtha fractions (*Rec.*, pp. 889-90); that there is a difference of opinion whether the casinghead gas comes from petroleum oil or not, though he is not familiar with the decisions of the State of Oklahoma on the subject (*Rec.*, p. 890). He distinguishes this material from gasoline by designating it with the special prefix casinghead (*Rec.*, p. 890). He uses gasoline as a generic term, using it in the plural and, when desiring to specify particularly, uses a prefix and would embrace in that use a material, though slightly unfinished, but not if unfinished for the purpose for which it was to be used (*Rec.*, pp. 891-2). If the material has achieved that degree of finish to be used for gasoline, he would embrace it within the definition of gasoline (*Rec.*, p. 892). He understands that refiners are accustomed to using the term "refined" as applicable to the products produced



by their refinery, and the same is true of his reading and observation, and it applies to a finished marketable product that has been finished at a refinery or some collateral plant (*Rec.*, p. 892).

The other expert called by the Government was Dr. W. P. Dykema, a consulting petroleum engineer, a graduate of the Michigan College of Mines in 1905, from which year until 1909 he followed mining engineering, and then for two years did consulting work in the oil field of California, surveying and general engineering, and from 1911 to 1914 was again engaged in silver and copper mining. Following that he was a year with the city engineer's office in Los Angeles, and from 1915 to 1920 was with the United States Bureau of Mines, which he had just left to engage in consulting work. During the time he was with the government he specialized on natural gas gasoline work, including casinghead, during three years being located at San Francisco and the other two at the Bartlesville, Oklahoma, petroleum experiment station, of which he was petroleum engineer the first year and superintendent the second year (*Rec.*, pp. 822-3). He has made experiments and examinations in Pennsylvania, West Virginia, California, Oklahoma and Louisiana fields. He wrote Bulletin 151, and Bulletin 176 Division of Petroleum Technology and was a coauthor of Technical Paper 232 issued by the Bureau of Mines. Bulletin 151 deals with compression and 176 with absorption methods, and 232 with the extraction of gasoline from residue gas from compression plants by absorption process. The bulletins have been widely circulated by the Bureau of Mines (*Rec.*, p. 824). After this witness had heard the defendant's expert witnesses testify he undertook to make an experiment during the trial (unaccompanied by anyone on behalf of the defendant) as to whether or not a certain material produced from another plant at Jenks would run a Packard car. Notwithstanding the fact that on preliminary cross

examination he was unable to say whether he had drained the reserve tank of the car used, of the real gasoline before attempting the experiment, he was allowed to testify, over objection, that he filled the tank of the car with casinghead product and ran it in from Jenks to Tulsa without any difficulty whatever (*Rec.*, pp. 824-28). Although this testimony was ultimately ordered stricken from the record by the court, it was only after the defendant was able to and did locate and produce the driver, and find and prove that the actual fact was that the reserve tank of the car had not been drained, and that it had consequently been run on the real gasoline instead of, as testified by the witness, on the casinghead product (*Rec.*, pp. 892-896). This witness also participated on behalf of the Government in the joint experiment conducted during the trial and was in the Pierce-Arrow car. He admitted that the Pierce car, after starting out without difficulty, stalled at a point about seven miles beyond Jenks, and after relieving the pressure and cooling the engine somewhat they were able to start again and get to within about one hundred yards of the Kiefer plant, when it was again necessary to relieve the pressure and get the engine in shape before it could drive in. He believed if the carburetor had been adjusted the car would have run steadily on the material (*Rec.*, pp. 828-9). At the Kiefer plant ten gallons of the blended material was taken, and he testified the car drove into Tulsa without any trouble, leaving Kiefer at 12:20 and arriving in Tulsa at 1:03, a distance of nineteen or twenty miles, at a maximum speed of thirty-five miles an hour, and that in his opinion an even lighter material would have run the car, and that it was his belief that any liquid made from natural gas by compression, of whatsoever gravity, would run an automobile (*Rec.*, pp. 830-2). He has experimented in running a Dodge car with 105 gravity gasoline, and he said "the naphtha" was most satisfactory and he could see no reason why

even the lightest product, methane, would not be a good motor fuel (*Rec.*, p. 832); that in his opinion the material used in the test was gasoline (*Rec.*, p. 832). He does not consider the extraction of the condensate by compression of casinghead gas a refining process, but considers it a process of manufacture, a separation, and in his opinion the material is a refined product because it needs no purification (*Rec.*, pp. 833-4). It is his view that the material requires no refining after it is in a liquid state. The process underground, by which it is assumed the casinghead gas comes off the oil, is similar to the process involved in refining oil in a still, that is, as heat is applied to the oil the temperature rises and the various liquids come off in the order of boiling points, and in the earth the oil is under pressure which raises the boiling points, and after they are released practically the same thing happens as the various boiling points are reached (*Rec.*, pp. 837-8). The vapor rising from a crude still is very similar to the vapor coming from a well, and they are both condensed into a liquid which is the same, and for this reason, in his opinion, what transpires under the earth is a refining process, and the material is therefore a refined product (*Rec.*, pp. 838-9).

Gasoline is used for heating, lighting and cleaning purposes. In his opinion, the fact that the product of compression of natural gas would be too high in gravity for ordinary commercial use would not make it anything other than gasoline (*Rec.*, pp. 839-40). He testified that the liquid was commonly known in the trade and in the scientific world as gasoline, and he had never heard it called unrefined naphtha prior to the beginning of this suit, and that in his opinion that is not an appropriate name because it is misleading in the respect that it would need further refining and further purification which, in the majority of cases, it does not, though in some instances where there is lots of sulphur it must be refined out, which is not generally the case concerning

Oklahoma gas (*Rec.*, p. 840). The reason he believes it does not need further purification is because it is fit for use and marketable as it is. He would not call blending a part of the art of refining because it involves no purification, and stated that it is never referred to as a refining process. He regards the recovery of gases at a refinery as a measure of economy and not a process of refining (*Rec.*, pp. 841-2). He had visited the plant of the Gypsy Oil Company in 1916, saw the material, that it was casinghead gasoline, water-white in color, and could be compared to distilled water (*Rec.*, p. 852). It was not unrefined naphtha. The fact that the product of the Gypsy plant might show a recovery of only 90 per cent on distillation and fail to meet the specifications of customers would not show that that material was not gasoline. He would not consider the blending of casinghead gasoline with naphtha a refining of the casinghead, because it would not involve the removal of impurities, but he would term it a finishing process (*Rec.*, pp. 853-4). He considers a finishing process a blending of two materials together to reach certain specifications (*Rec.*, p. 854). There are two purposes in blending casinghead product, one, to make it less volatile for handling, and the other to conserve the product. Blending is usually done at a casinghead plant and the product is frequently marketed direct (*Rec.*, p. 854). The casinghead product could be marketed, without being blended, to buyers who make a business of blending that use it in blending with naphtha (*Rec.*, pp. 854-5). In his opinion blending would not be refining but merely a mixing. He has never seen the term unrefined naphtha applied to casinghead gasoline in any technical work, and so far as his knowledge goes it is not so applied in the scientific world (*Rec.*, p. 856). On cross examination he admitted that all scientific literature he had read on the subject uses the word casinghead as a part of the name casinghead gasoline. He was confronted with his own Bulletin 151, wherein he

characterizes the material in question as "condensate," and explains that weathering to a sufficient degree to make it shipable often results in extreme loss, whereas by blending with heavier refinery distillates this loss could be greatly reduced; that this has led "condensate producers" to take advantage of blending to increase the volume of products marketed and also the supply of marketable motor fuel, and "condensates produced by compression is also an undesirable fuel for gasoline engines. It is exceedingly volatile, which causes loss in handling, is dangerous because fumes are easily formed, and gives less power as compared with equal volume but heavier distillates, a larger number of gallons being required to develop the same power. It gives a quick, sharp explosion in a motor cylinder but seems to lack 'push' after the explosion has taken place" (*Rec.*, pp. 857-8). A small quantity of natural gas gasoline is sold to consumers unblended as gas machine gasoline, and some known as export gasoline sold in foreign trade; further, that the great bulk of condensate is blended one way or another before it reaches the consumer, but not always completely blended at the plant where made (*Rec.*, p. 858). He then admitted that the material might properly be termed unfinished gasoline if it was still to be finished by further blending in order to meet some specifications (*Rec.*, pp. 858-9). Further in his bulletin it was shown that he related the very practice followed by the Gypsy Company of blending in stages at different points, and then admitted that the operation was not complete until finished at the refinery (*Rec.*, pp. 859-60); following which his bulletin states that where the blending is by refining or blending companies as last described, "the operation is complete and the blended product is ready for market" (*Rec.*, p. 860). Excerpts from his bulletin also related the practice of partial blending at the casinghead plant and explained that some operators, because of the cost of bringing in the large quantities of

naphtha necessary, or because they control a refinery and desire to refine the gasoline by a further treatment such as distilling, follow the practice of blending at the compression plant only so far as necessary for shipment, the final blending and treatment being given at the refineries or points where the desired quantities and qualities of distillate may be more readily obtained (*Rec.*, p. 860).

He defined gasoline as the lighter petroleum distillate fit for use in an ordinary automobile (*Rec.*, p. 863); that gasoline is a finished product of a petroleum refinery (*Rec.*, p. 865), and that it is a product of the fraction of petroleum long known under the generic name naphtha, which includes all those lighter hydrocarbons above kerosene. Gasoline and naphtha are names interchangeably used with relation to the material of which the finished product, gasoline, is made, and naphtha is a generic term which embraces gasoline (*Rec.*, p. 866). He stated that the process of distillation in a refinery which produces still gas is a parallel process to that under the earth and that for that reason he considered the casinghead product refined, although he would not go so far as to call the still gas refined gasoline before condensation, but claimed that it might be, after condensation, and gave as the only instance to his knowledge of it being so sold an occurrence in Alaska in 1913 (*Rec.*, pp. 867-8); and, so far as he knew, in the United States the practice was universal to further refine the material before it was sold as refined gasoline, and blending was practiced at refineries of this material long before casinghead gasoline was known (*Rec.*, p. 868). When his theory, that the separation of the constituents underground amounted to refining as applied to the casinghead condensate, was attempted to be applied to the remaining crude, he could not see how you could consider the crude oil refined (*Rec.*, pp. 868-9). He finally admitted that his notion of a refining process was making a thing pure by the re-

removal of impurities, and that it could therefore be said that a thing which it was unnecessary to make pure, because it was pure, would be unrefined (*Rec.*, p. 869). Trade publications do not quote the material as gasoline but as raw casinghead, or casinghead, or some particular kind of blend. He never knew of a curb filling station selling raw casinghead material as gasoline (*Rec.*, pp. 870-1). The ordinary scientific tests to determine whether or not a material is gasoline are from the boiling points obtained by fractional distillation (*Rec.*, pp. 871-2). The naphtha fractions, upon being separated from the crude in a refinery, might properly be called unrefined naphtha; and the first time he heard the expression it imported to his mind the lighter cuts of petroleum which needed further purification, a part of which cuts is the material from which gasoline is made, and it would embrace the so-called still gas gasoline (which he previously admitted was identical with the casinghead product) (*Rec.*, pp. 838, 872-3). When gasoline fails to reach specifications it is ordinarily blended to get it to some marketable specification (*Rec.*, p. 873). The casinghead material is frequently and very generally used by refiners as a raw material from which to make gasoline (*Rec.*, p. 873). His Bulletin 151 is *Exhibit 150*; Bulletin 214, of the Bureau of Mines, by E. W. Dean, is *Exhibit 151*, and shows that the Government itself uses and recommends the practice of determining the material by distillation curves (*Rec.*, pp. 874-5).

As reasons why this Court should review this case, the Solicitor General, at page 11, under Point II of his Brief, asserts that it is a case of great magnitude, upon the determination of which the rights of many other parties depend; and the Director General, on the opening page of his Brief, asserts that the judgment of the Circuit Court of Appeals probably subjects him to liabilities for overcharges in this respect aggregating \$500,000.



Why these assertions are persisted in in the face of the known fact that, apart from the other indictments relating to the same transactions, there is only one other cause that can be affected, *i.e.* the suit of the Texas Company for far less than \$100,000 (and the statute of limitations has long since run against any other possible overcharge suits), is inexplicable.

Next, the Solicitor General, under his Point II, asserts that the article is generally known by the trade and in commerce and among those by whom it is produced, used and consumed, as gasoline. These statements are directly contrary to the evidence. The only attempt made by the Government to prove the practice of the trade in relation to what the material should be called, was by the witness Haigh of the Ajax Company, who stated (*Rec.*, p. 396) that he designated the material shipped by his company as gasoline "simply as a trade name"; and this testimony was immediately stricken out on motion of the defendant (p. 397) on the ground that the witness was not qualified; and on his cross-examination (p. 402) it developed that what the witness was in fact talking about was a blend to a gravity of 56 to 58 degrees—one which defendant concedes might be deemed gasoline—; and he further testified on cross-examination that he did not call the unblended material similar to that shipped by defendant gasoline, but that it was sold and shipped to refineries, he supposed, to be further refined (*pp.* 401-404).

Next, under Point III (p. 12), the Solicitor General asserts, as does the Director General (*Point I*, p. 2), that the Circuit Court of Appeals disregarded entirely the regulations of the Interstate Commerce Commission made within the scope of its authority under the so-called Transportation of Explosives Act, and thereby practically nullified the powers of the Government under that Act.

The fact is that the Safe Transportation Regulations were in no wise in issue in the District Court; the only contention made by the Government with respect thereto being that they were evidentiary of the fact that the material should be called gasoline, and they were so received by the Court and submitted to the jury.

As before pointed out, these regulations were not made pursuant to the Commission's authority to make rates, but expressly under its authority under the Transportation of Explosives Act, and they do not purport to affect or control rates.

Furthermore, as stated in the Government's petition (p. 7), there are other indictments pending against respondent charging violation of the Safe Transportation Act; and it was shown that the defendant, in fact, by the use of the double description, continuously complied with the Safe Transportation Regulations as such, which fact was even conceded by the Government.

Next, the Solicitor General, under Point IV (p. 12), and the Director General, under Point II (p. 2), of their respective briefs, assert in substance that the administrative functions of the Commission are interfered with by the opinion of the Circuit Court of Appeals, and they cite the decision of the Commission in *Southern Carbon Co. v. Arkansas & L. M. Ry. Co.*, 62 I. C. C. 733, in support of their contention. The Commission has never passed on the question in its administrative capacity, and the very contention that the Commission's administrative functions are involved concedes the argument made under Point IV (3) hereof that in such case the District Court was without jurisdiction until the Commission should pass upon the subject. However, the case cited does not sustain their contention, as the Commission did not pass upon the applicability of the description "unrefined naphtha" in that case, there being no rates under that description in effect, but simply in sub-

stance held that under the rates there available the "gasoline" rates were applicable. And, in its most recent decision (February 6, 1925) mentioning the product, the Commission refer to the blending of "casinghead gasoline to produce commercial gasoline."

*Transcontinental Oil Co. v. A. & V. Ry. Co.*, 96  
I. C. C. 136, 137.

At page 13 of his brief, the Solicitor General argues that the Circuit Court of Appeals erred in holding that the Government throughout the trial improperly insisted that the conduct of the defendant was fraudulent.

Respondent contends that a charge of defrauding the carriers (amenable under Section 10 of the Interstate Commerce Act) is repugnant to and inconsistent with the charge in the indictment of receiving a concession, which matter is argued under Part III (a) hereof.

At page 22 of the Solicitor General's brief, he states that it was admitted that from the time the plant was constructed in 1913, up to the end of 1914 or 1915, the practice was to ship naptha from Port Arthur to Kiefer, and there blend it with casinghead gasoline, and ship the blended product to northern points, describing it as "gasoline". If this statement intends to convey the inference that the commodity shipped in 1913, 1914 and 1915 to northern points was the same as that subsequently shipped to Port Arthur under the designation "unrefined naptha", it is directly contrary to the evidence. The admission was clearly limited (*Rec.*, p. 481), and the evidence definitely shows that in these earlier days the material shipped North was fundamentally different from that subsequently shipped to Port Arthur as "unrefined naptha". It shows that what was shipped North to market was a product the result of a blend in about opposite proportions designed to make gasoline, and which was in fact sold as gasoline, and which defendant conceded, and now concedes, was and is gasoline, although of a poor and unsatisfactory quality, which was the cause of the discontinuance of the efforts to blend to

the extent of making gasoline in the field (*Rec.*, pp. 549, 550, 555). The very fact that the Solicitor General is himself misled as to the effect of this evidence is the best demonstration of the impropriety of its admission.

At page 27 of the Solicitor General's brief, the testimony of the witness Haigh of the Ajax Company, above referred to, stating that he used gasoline "simply as a trade name", is quoted. As above pointed out, his testimony was stricken out, and his cross-examination showed he was talking about a different material—one which defendant concedes might properly be called "gasoline".

The Solicitor General states (*Brief*, pp. 29, 30) that respondent contends that a product is not gasoline and should not be so shipped "unless it meets the *specifications of the particular order*."

Recognizing that this assertion is contrary to the whole trend of respondent's contentions, the Solicitor General deems it necessary to substantiate this assertion by quoting from a discussion between respondent's counsel and the Court, but carefully cuts the quotation off to exclude counsel's explanation that it was respondent's contention that it would be shown that the material material in question "is not gasoline by any of the accepted standards" (*Rec.*, p. 318).

Again, the Solicitor General refers to the testimony of the witness Pritchard at pages 590 and 602 of the *Record*, as in substance indicating that, although he might consider a product gasoline because it met the specifications of one purchaser, he would not consider it gasoline for another purchaser whose specifications it failed to meet. The witness was the Government's own witness, even though he was an employee of the respondent. But his testimony does not fairly import that he would contend that such a material was not gasoline for shipping purposes. He was simply answering the query of the Court, and undoubtedly with accuracy, that he would not ship gasoline of one specification on an order calling for gasoline of a different specification.

At pages 38 and 39 of the Solicitor General's brief, he quotes from the testimony of the general freight agent of the Frisco, which he argues substantiates his contention that the carriers did not know what the commodity was that was to be shipped under the designation "unrefined naphtha". It is a matter of common knowledge, as the witness testified, that it is not one of the functions of a general freight agent to inspect the commodity tendered by a shipper to see whether it agreed with the tariff description used by the shipper. On the other hand, the evidence shows that the local freight agent, within whose cognizance such a question peculiarly is, was advised at the time the rates on unrefined naphtha were initiated that the material theretofore shipped as *gasoline* would thereafter be shipped as *unrefined naphtha* (*Rec.*, pp. 550, 557); and it was expressly the duty of the safe transportation inspectors to enforce all the safe transportation rules, including Rule 1712, which required that the proper tariff name be used in billing the commodity (*Rec.*, pp. 429-436). And for more than two years they did this without raising any question.

At page 46 of his brief, the Solicitor General quotes Dr. Garner's testimony as to the definition of "gasoline" that it

"would be that low boiling portion of naphtha having a gravity from 76 possibly to 82 and usable for the purpose of illumination";

and then states that this is an exact description of "casinghead gasoline". This assertion is utterly unwarranted by the testimony. It is true that casinghead gasoline is generally within the ranges of gravity mentioned, but there is not a word of testimony to the effect that it is usable for the purpose of illumination; and it is impossible to read the testimony of any of the experts without reaching the obvious conclusion that the casinghead gasoline is far too dangerous to be usable for the purpose of illumination.

Again, at pages 46 and 47 of the Solicitor General's brief, Dr. Garner and Dr. Bacon's testimony is criticised to the effect that the material, to be called "gasoline", must be suitable to run a motor car, as being inconsistent with the fact that "it was demonstrated that it would successfully operate a Pierce-Arrow car". How successfully it did operate that car, has already been shown. But there is no inconsistency whatever in their testimony, and the fact that the casinghead did run the Pierce car under certain most favorable conditions. The evidence shows that a car had also been run on crude oil from the Garber Pool; yet the Government would hardly contend that that fact made that crude oil gasoline.

At page 55 of his brief, the Solicitor General, in describing the joint tests made during the trial, says there is no testimony with reference to the operation of the Packard car, and that presumably therefore there was no trouble in the operation of that car. How such a statement can be made is inconceivable. Both Col. Burrell and Dr. Garner testified that in the test with the Packard car the material failed absolutely, the car going completely "dead", although every opportunity was afforded the Government's experts to try to make it operate (*Rec.*, pp. 797, 798, 800, 843-851); and the Government—apparently to avoid putting its own expert who was in the Packard car on the stand, because of the admissions he would have to make—waived their previous claim that he was an expert, although sent by it expressly for the purpose of witnessing the test (*Rec.*, p. 804).

Next, at pages 55 and 56, the Solicitor General gives the Standard, Webster and Century dictionary definitions of "gasoline", every one of which states the use to which gasoline is put: the Standard—as fuel in vapor-stoves and for carbonizing air and water-gases; the Webster—as a solvent for oils, fats, etc., as a carburetant, and to produce heat and motive power; and the Century—for saturating air or gas in gas machines or carburetors,

and in the engines of motor vehicles. And, in the face of the fact that the testimony overwhelmingly shows that not only is the material shipped not used for these purposes, but is even admitted by the Government's experts to be not suitable for such use, the Solicitor General baldly asserts that the commodity shipped is strictly in accordance with the technical definition of gasoline.

Throughout its argument, as on the trial, the Government insists that gravity is the sole test of whether or not a material is gasoline. It abundantly appears by all the expert testimony that, although a material must be within certain ranges of gravity to be gasoline, the mere fact of so being does not make it gasoline. It must meet numerous other tests as well. It would seem that common sense would demonstrate that if the material shipped was in fact gasoline, the respondent would sell it as such in markets near its production, instead of going through the expensive operation of carrying coals to Newcastle that would be involved in paying freight to carry it to Port Arthur, where the great body of respondent's gasoline is made, under the necessity of its being thence again reshipped to market, with additional freight charges.

At pages 60 and 61, the Solicitor General presents the novel argument that if, as he contends, the material is in fact gasoline, the Court should have so instructed the jury and that consequently

“no harmful error could be committed by the court in the admission of evidence, or in his charge to the jury, or in refusing to charge requests presented by the defendant, or by counsel in presenting the Government's case to the jury.”

Such a contention would support an argument that in similar circumstances a conviction by a jury composed of but ten members should be sustained because no harm could have been done the defendant.



Finally, the Solicitor General cites several cases by the Interstate Commerce Commission and the Courts, in substance to the point that a question such as that here involved is to be determined by the trade understanding, name or custom. These cases but go to support the respondent's contention. The Solicitor General evidently cites them in reliance on the testimony of the witness Haigh quoted at page 27 of his brief, apparently in ignorance of the fact that this testimony was stricken out, as previously pointed out, and of the further fact that all the evidence, and the only evidence, on the question of trade custom is entirely with the respondent; that is, that the material is not called or sold in trade as gasoline (*Rec.*, pp. 683, 699, 867, 868, 870, 871).

At pages 74 and 75 of his brief, the Solicitor General asserts that

“Had the shipments been billed under any of the designations authorized by the regulations, and hence by the tariffs, the gasoline rate or a rate not lower than the gasoline rate would have been applied.”

This assertion is directly negated by the facts admitted by the Government on the trial, that throughout the period when the regulations read that the material *may be shipped* as gasoline, the bills of lading, in addition to the description “unrefined naptha”, bore a specific reference to the Casinghead Rule 1824-K and a stamp showing that the placard usable only on casinghead products had been applied to the car, and after the rules became mandatory that the commodity *must be billed* as “gasoline”, “casinghead gasoline” or “casinghead naptha”; that the bills of lading bore both descriptions “unrefined naptha” and “casinghead naptha” and the placard stamp (*Rec.*, pp. 429-436).

It was not because of ignorance concerning what the material was that was being shipped as unrefined naptha

that that rate was applied—on the contrary, every one concerned throughout the more than two years involved well knew all along—it was because some one changed his mind about the matter that the question arose.

At page 76, the Solicitor General again insists that the Circuit Court of Appeals was entirely mistaken concerning the opinion of the Interstate Commerce Commission in the *National Refining Company case* (23 I. C. C. 527). We insist the contrary is the fact, and that the Court thoroughly apprehended that case. The mere fact that the toppings there in question were of small value is not of controlling moment. It would of course be of importance if the reasonableness of the rate was in question, but it has no bearing on the issues here. Indeed, if it were not for the use which has been found for the casinghead condensate, the chances are its value would be even less than were those toppings. As the evidence shows, the gas from which the condensate is made was formerly wasted altogether.

The Director General, at pages 30 and 31 of his brief, accuses defendant's counsel of skillfully misleading the witness League into admitting that there "might have been" some difference between the degree of blend of material shipped by others and that shipped by the Gypsy Company; and accuses the Circuit Court of Appeals of misconceiving the true significance of League's testimony that the blend of certain other shippers who shipped and described the blended commodity as "gasoline" contained as much as 75 per cent naptha (*Rec.*, pp. 446, 447, 441). The only misleading or misconception there is involved is in the attempt on the part of the Government to represent that the degree of blend is of no importance in determining what the material is. Neither at the trial nor now does defendant contend that a blend consisting of 75 per cent naptha and 25 per cent casinghead should not be called gasoline. On the con-

trary, defendant admitted on the trial that gasoline could be made by such a blend, and that it had in fact itself made, shipped and sold it as such in the earlier days of its operation of casinghead plants.

Again, at page 31, the Director General asserts that the only plausible theory upon which defendant can justify its course is, that the blending was done with heavy naptha, and that such naptha being crude and not refined thus an unrefined naptha is made; and then proceeds to knock down this plausible theory by the argument that therefore the more the naptha, the more unrefined. The trouble with this argument is that the only party which has advanced any such theory is the Government itself, and that for the obvious purpose of criticising it.

The defendant does not contend, and has not contended, that the addition of the crude naptha to the casinghead makes it unrefined. As has been stated over and over again, the grounds upon which the defendant asserts that the adjective "unrefined" is appropriate is that the material is unfinished; that it needs to be taken to a refinery to be finished; that such finishing consists in blending; that blending is an integral part of the art of refining; and that until the material is finished it is in an unrefined state. And this applies to the unblended casinghead just as much as to the blended.

At page 38, the Director General repeats the assertion of the Solicitor General, to the effect that the respondent contends that no material is gasoline unless it fulfills the particular specifications of a particular customer, which, as before pointed out, is quite unwarranted.

At page 39, the Director General attempts to draw some broad distinction, which he supposes to exist, between a distillate and a condensate. Evidently he does not understand that all distillates are in fact condens-

ates; nor the Government's own experts' theory that the casinghead condensate was a distillate, the first operation of which was produced by nature underground (*Rec.*, pp. 837-839, 879-880).

The Director General, at page 49, and again at page 54, referring to still gas gasoline, denominates it "still gasoline".

With such an utter misconception of terms, it is impossible to point out the fallacy of his contentions without a detailed reference to the testimony, the substance of which is hereinbefore set forth at length.

At page 71, the Director General calls attention to the fact that one of the Government's experts never heard of casinghead naptha before hearing it in this case; which but betrays the inexpertness of the witness himself, since it is a term specified by the Interstate Commerce Commission in its Safe Transportation Regulations set forth in italics by the Director General on page 18 of his own brief.

The Director General seems to make much point of the testimony of some of the experts to the effect that, while they considered the name "unrefined naptha" entirely appropriate, if they were choosing a name that would be more descriptive in their mind they would prefer "unfinished naptha". While we regard this as of no importance, it may be observed that the respondent, in its telegram quoted at page 77 of the Director General's brief, requested the carriers to establish rates on "unfinished naptha"; and it was apparently either by accident of the carriers or through a desire to follow the precedent established in the Muskogee and Carterco rates that the term "unrefined naptha" was used in the tariffs, instead of "unfinished naptha".

At page 79 of the Director General's brief, referring to the Commission's decision in *National Refining Co. v. M. K. & T. Ry. Co.*, 23 I. C. C. 527 (printed in full at page

1378 of the *Record*), it is stated that a reference thereto will show that the Commission

“held the gasoline rates legally applicable, but merely unreasonable,” etc.

This is an absolute misstatement of what the Commission held.

Reference to the opinion shows that the carriers contended that the product there in question should be classified as a refined oil; that the complainant contended it should not; and, after stating these contentions and the fact that the product

“seems to have no distinct commercial designation or trade name” (*Rec.*, p. 1381),

it says:

“Moreover, this light end distillate, while it has been increased in value by a process of manufacture, was not what is commercially understood as a refined product of petroleum oil”.

And finally concludes (*Rec.*, p. 1383) with a repetition

“that there is no trade name or commercial designation for the commodity here in question, and we deem it best to leave the description of this commodity in the first instance to defendants, who were doubtless so able to amend their tariffs as to establish the rates above found reasonable in such language as will not lend itself to misunderstanding or afford opportunities for mis-billing.”

Manifestly, it would be a contradiction in terms for the Commission to say that the gasoline rates were legally applicable, but merely unreasonable as applied to this particular commodity. The very statement imports that the particular commodity is not gasoline.

From this necessarily lengthy review of the evidence, these things would seem to be apparent, as pointed out in the motion to dismiss or affirm:

That there is involved in this case no question of uniformity of decision; no question of peculiar gravity or of general importance; that the judgment of the Circuit Court of Appeals does not, as represented on the petition for the writ, have any bearing on the Transportation of Explosives Act; that the Circuit Court of Appeals did not, as represented on the petition for the writ, take the "extradordinary action" of reversing and remanding for dismissal; that the case involves solely one contested question of fact; that the judgment of the Circuit Court of Appeals merely reverses, with directions to grant a new trial, for errors committed in the District Court; that there is an effort now by the Director General to make an issue concerning tariff construction which did not exist in the courts below. The petition presents one case, the briefs show another. The inducing petition fails to give adequate information concerning the record and essential facts. The case set up on the argument now is radically different from that set up in the petition. (*James C. Davis, Agent, etc., v. J. M. Currie; Missouri Pacific R. R. Co., Pet'r, v. R. L. Hanna; Erie R. R. Co., Pet'r, v. Morris Kirkendall*; all decided November 17, 1924; 69 L. Ed. 85, 56). And it is believed the writ should be dismissed.

Since the respondent's brief in support of its motions to dismiss or affirm was filed, the section of the Judicial Code under which the Government claims authority for a review of a decision adverse to it in a criminal case, *i. e.* Section 240, has been revised by the Act approved February 13, 1925 (H. R. 8206, 68th Congress), apparently with the object of authorizing such review. The section now reads:

"Sec. 240. (a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of

Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the case had been brought there by unrestricted writ of error or appeal."

It will be noticed that the following important changes have been made:

That the Government is expressly specified as a party entitled to petition; that the case may be removed either before or after judgment, and that it may be determined by the Supreme Court

"as if the case had been brought there by *unrestricted* writ of error;"

and that it applies to the removal of cases from the Court of Appeals of the District of Columbia; and the limitation of cases made final in the Circuit Court of Appeals by the provisions of that Act is eliminated.

It would seem that those changes demonstrate that the Government was not considered as a party entitled to petition under the language previously used, and that there was an effort to get away from the decisions in the *Sanges* and *Dickinson* cases by the insertion of the word "unrestricted" before "writ of error".

Also since that brief was filed this Court decided *United States v. Joseph Weissmann*, December 15, 1924, 69 L. Ed. 147, again reiterating its conclusion that the Criminal Appeals Act authorized writs of error in favor of the Government only in a restricted class of cases, from which it would seem that the limitation on Section 240 previously existing, for review by certiorari



“with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court,”

would have confined it only to that restricted class of cases covered by the Criminal Appeals Act.

### **Groupings of Respondent's Assignments of Error in the District Court.**

The assignments of error have been grouped to be argued together hereinafter, as follows:

I, II, III and CXVIII (1), which relate to a motion to strike the indictment from the files, and plea in abatement to it, and refusal to permit proof on the plea in abatement; under Part II.

IV and CXVIII (5), being order overruling special demurrer for duplicity of certain counts, and motion in arrest of judgment respecting the same; under Part III (d).

V and CXVIII (2, 3 and 4), being order overruling demurrer to indictment and motion in arrest of judgment; under Part III (a, b and c).

VI, LXXXII, CXVII (13, 14 and 15), and CXVIII (5), being order overruling motion to instruct a verdict for defendant; under Part IV (a).

VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XXXI, XXXII, XXXIII, XXXIV, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVIII, XLIX, LI, LII, LIII and LXXXI, being evidence admitted on the theory of admissions, and order overruling motion to strike out same; under Part IV (b).

XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, L, LXXXI, being evidence admitted concerning practices of others not connected with defendant, and order overruling motion to strike out such evidence; under Part IV (c).

XVI, XVII, LXIX and LXXX, being evidence admitted directed to the discrimination counts, and order overruling motion to strike out same; under Part IV (d).

LVI, LVIII, LIX, LX and LXXXI, being evidence relating to other parties using unidentified material; under Part IV (e).

LV, LVII, being evidence admitted concerning an alleged test; under Part IV (f).

XXXVI, XXXVII, XLVI and LXXXI, being admission of evidence upon the theory of establishing intent, and order overruling motion to strike out same; under Part IV (g).

LIV, LXXIV, LXXXIII, being evidence and charge to jury concerning rates and tariffs; under Part IV (h).

LXII, LXIII, LXIV, LXV, LXVI, LXXI and LXXIII, being rejection of evidence tendered by defendant concerning practices of others; under Part IV (i).

LXI, LXVII, LXVIII, LXX, LXXII, being rejection of evidence offered by defendant on various matters; under Part IV (j).

XXIX, XXX, XXXV, LXXV, LXXVI, LXXVII, LXXVIII and LXXIX, being improper comment and procedure in presence of jury; under Part IV (k).

LXXXII, being order overruling motion to direct a verdict for defendant; under Part IV (l).

LXXXIV to CXVI, inclusive, being instructions to jury requested by defendant and refused by the court; under Part IV (m).

CXVII, being order overruling motion to set aside the verdict and grant new trial, and CXVIII and CXIX, being order overruling motion in arrest of judgment( additional grounds) and sentence; under Part IV (n).

## PART II.

**The indictment not having been read to the grand jury, cannot be said to be their conscious and intelligent action, and therefore the motion to quash the plea in abatement should have been sustained (Assignments of Error I, II, III and CXVIII [1]).**

On arraignment the defendant filed a plea in abatement and a motion to quash and set aside the indictment on the ground that it was not in truth and in fact a true bill, because it had not been read to or by the grand jury, and they did not at any time know the contents thereof, and consequently did not vote upon the same (*Rec., pp. 145-148*); which plea and motion the Court struck out on motion of the Government, declining to allow defendant to make proof of its plea, apparently on the theory that inquiry into the doings of the grand jury would not be permitted to dispute its record.

The Fifth Amendment to the Constitution of the United States, among other things, provides:

“No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in times of war or public danger \* \* \*”

The evident and expressed purpose of this amendment is to secure to persons, freedom from criminal prosecution, except on presentment or indictment by grand jury, unless such persons belong to the excepted classes mentioned in the amendment. In order for the persons sought to be protected by this amendment, in order to give the amendment the force and effect it was intended to have, in order to have an indictment found by the grand jury, in order to prevent robbing the amendment

of vitality, the indictment or presentment found, must be of necessity, the free and conscious act of the grand jury. The indictment or presentment must be couched in the language of the grand jury or in that of some other person consciously adopted by the grand jury as its own. If an indictment or presentment is not couched in the language of the grand jury, if the indictment or presentment is not drawn by another as directed by the grand jury, if the indictment or presentment has not been read to the grand jury, and they do not know what it contains, it cannot be the conscious and intelligent action of the grand jury, and therefore, it cannot, in any just sense of the term, be said to be an indictment found and presented by the grand jury. If an indictment containing many hundred pages and consisting of charges of one hundred different offenses, can be presented to a grand jury as an indictment, and such instrument not read to the grand jury and the grand jury being unacquainted with its contents, endorse it as a true bill, and return it in open court, if such a paper can in any just sense of the term be called an indictment, it is evident that the security intended by the above amendment to be conferred on the citizen, is at once destroyed and of no avail.

The office of the grand jury at common law, was to protect the citizen or subject against unjust prosecution, to make such prosecution depend upon the intelligent action and independent judgment of the grand jury, and not to be instituted at the mere desire, whim or caprice of prosecuting officers representing the crown, and the purpose of the above amendment was to secure and to perpetuate this independent action of the grand jury, and to prevent a citizen or resident of this country from being criminally proceeded against at the mere dictation of the officers of the general government; to prevent such citizen or resident being haled into court to answer any charge, infamous in character, except on the intelligent and independent inquiry of a grand jury. The whole

scheme of criminal prosecution existing in this country and sought to be established by the fifth amendment, will be destroyed if officers of the government are permitted to draw indictments, not acquaint the grand jury with their contents, to have the foreman indorse the indictments "a true bill", and return the same into court as the action of the grand jury.

In *United States v. Farrington*, 5 Fed. Rep. 343, motions were filed to quash the indictments, and among other grounds for so doing, was the ground that the indictments were not read to the grand jury, nor the substance of the various counts explained. The indictments were quashed on other grounds and the court did not pass on the particular ground above named, its action on the other ground seeming to make it unnecessary to pass directly on the point that the indictments should have been read to the grand jury. It was insisted that the court could not go behind the return of the grand jury of the indictments to the court, and determine what took place in the grand jury room, but that the indictments must be received as part of the records of the court and free from attack. After reviewing many of the authorities, Judge (afterwards Justice) WALLACE, on page 347, says:

"The rule which may be adduced from the authorities, and which seems most consistent with the policy of the law, is that whenever it becomes essential to ascertain what has transpired before a grand jury it may be shown, no matter by whom; and the only limitation is that it may not be shown how the individual jurors voted or what they said during their investigations (citing authorities), because this cannot serve any of the purposes of justice."

On page 345 it is said:

"It is the duty of the court, in the control of its proceedings, to see to it that no person shall be

subjected to the expense, vexation, and contumely of a trial for a criminal offense unless the charge has been investigated and a reasonable foundation shown for an indictment or information. It is due also to the government to require, before the trial of an accused person, a fair preliminary investigation of the charges against him. The cases are frequent when, after all these precautions have been observed, it appears upon the trial that the government has been subjected to discredit and expense which might have been avoided if there had been a more careful preliminary investigation."

In *United States v. Terry, et al.*, 39 Fed. 355, pleas in abatement were filed to the indictments, among other things setting up that the indictments were not read to the grand jury. The court held that the pleas were bad as they tended to contradict the record, but held that the pleas could be treated as motions to quash the indictments and the court so proceeded to consider them and determine the points raised. In discussing attacks on indictments, Judge HOFFMAN, at page 357, says:

"But it has been held that the testimony of grand jurors may be received to show that under a misapprehension of the law the indictment was found on a majority vote of the jury, and without concurrence of twelve of the number, and that therefore it was void, and no true bill; and, *secondly*, that the court, while recognizing the absolute verity which a regular judicial record imports, and the policy on which the rule is founded, yet holds that there has always been and always must be from the necessities of the case a power in the court to vacate or cause to be amended a record which has been erroneously or falsely made, by inadvertency or otherwise, by any of its officers; and that it is competent for it to say, if the claims of justice require it, 'This is not our record; it is false and erroneous, and the authentication it bears is unauthorized and unwarranted'."

It is true the question in the above case was decided adversely to our contention in the case at bar, but it is to be noticed that in the cited case, it appeared that the indictments were brought to the grand jury, that the grand jury apparently knew what was contained in the indictments, and that the grand jury in the presence of the district attorney agreed to dispense with the reading of said indictments and to present the same to the court without reading or hearing read, the said indictments. In the cited case the court was enabled to say from the record and the hearing on the motion (*page 359*):

“This case was, therefore, passed upon, and the bill substantially, though not technically and formally, found, before the alleged communication to the grand jury of the alleged wishes of Mr. Justice FIELD was made to them. The jury, saw fit to dispense with the reading of the indictments, relying, as they had a right to do, that the district attorney had, in framing the bills, obeyed their directions.”

Mr. Edwards, in his work on the Grand Jury, criticizes the *Terry* case above quoted, and says:

“If the grand jury after hearing the evidence find a true bill without it being read to them, it has been held not to afford ground for setting aside the indictment so found. It is difficult, however, to reconcile this decision with the ruling in *Ex Parte Bain*. It can hardly be said that the finding of a bill, the contents of which are unknown to the grand jurors, is any more their finding than the bill altered in substance after presentment. The grand jury have no knowledge of the nature of the charge to which they give their sanction. They may vote to find a true bill upon the evidence they have heard, while the allegations of the bill to which their sanction has apparently been given may present a totally different offense, and which, if



known to the grand jurors upon hearing the evidence, they would have ignored."

*Edwards, The Grand Jury, p. 155.*

In *Eubanks v. State*, 114 Pac. 748, it appears that witnesses, including members of the grand jury, were examined on the motions to quash, and it appeared from such evidence that the grand jury had never read the indictments and did not know what they charged except as the titles indicated, and did not vote on some out of a bunch of indictments found. The lower court overruled the motion to quash, and, on appeal, the Criminal Court of Appeals reversed the lower court, and after reviewing the case and authorities, say:

"The common law rule of secrecy has no place under the provisions of our criminal procedure, which recognizes personal constitutional right as superior to every other consideration, and, whenever it becomes essential to the ends of justice to ascertain what has occurred before a grand jury, it may be shown by the testimony of the grand jurors, and particularly whether or not a vote or ballot was taken showing the concurrence of the necessary number of grand jurors to find a true bill; the only limitation being that a grand juror will not be permitted to testify how any member of the jury voted or the opinion expressed by any of them upon any question during their investigations."

In *Ex Parte Bain*, 121 U. S. 1, this Court discharged upon *habeas corpus*, the petitioner for the reason that the indictment on which he had been tried and convicted, had been amended by the court after its finding by the grand jury. The grand jury being a part of the court, and under, at least to a considerable extent, the court's direction and control, and the indictments found by the grand jury being a part of the records and proceedings of the court, it is difficult to say on what theory the court discharged the petitioner on account of the amendment

to the indictment, unless it be that the amendment, not being in the words of the grand jury, could not be the act of the grand jury, and therefore, it was impossible for the court to amend an indictment, because in such amendment it was impossible to secure the concurrence of the grand jury. If this be so, it seems necessarily to follow, that it is equally necessary for the grand jury to be acquainted with the facts and contents of the indictment before it leaves its custody, and is delivered to the court. If the act of the district attorney and the court in amending an indictment vitiate it because such action renders it impossible to be the intelligent action of the grand jury, how can an indictment not read to a grand jury, with the contents of which the jury is unacquainted, be an indictment if it lacks the essential necessary to constitute a valid indictment, namely, the intelligent, independent and conscious action of the grand jury?

There having been some doubt as to the proper method of presenting the questions raised by the motion and plea, the rule varying in different districts, the defendant in this cause has presented the matters challenged, to the attention of the court both in the shape of motion and plea in abatement. Each District Court of the United States seems to have authority to mould to a large extent, its own practice in criminal affairs, and to follow to such extent, as it may desire, the practice of the local courts in which it is sitting. It is true now, as was said by Circuit Judge SWAYNE, in *United States v. Ambrose*, 3 Fed. 283, 285:

“It is proper to remark that the authorities upon the general subject as to how far an indicted party may go behind the indictment, as regards the action of the grand jury, or the questions he may raise, or the objections he may make, or what objections, if sustained, are fatal, or what are otherwise, are in utter confusion upon the subject.”

Some of the confusion mentioned, however, has disappeared. There is conflict and decided conflict, between the different courts as to the grounds on which they will set aside indictments. There is still confusion and conflict between the courts as to whether the proper method of attacking the indictments is by motions to quash or by pleas in abatement, or, an application for a rule to the court to file a motion or plea. But all modern cases now seem to recognize the fact that the mere finding of an indictment regular on its face and shown to be regular by the records of the court, does not prevent an attack on the indictment.

See:

*Low's Case*, 4 *Greenleaf*, \*440; 16 *Am. Dec.* 271, 273, 274.

*Re Atwell*, 140 *Fed. Rep.* 368.

*Burdick v. Hunt*, 43 *Ind. Rep.* 381, 389.

*Commonwealth v. Mead*, 12 *Gray*, 167; 71 *Am. Dec.* 741, 742.

*State v. Cain*, 8 *N. Car.* 352, *N. S.* 187.

*State v. Fellows*, 3 *N. Car.* 340, *N. S.* 382.

*State v. Grady*, 84 *Mo.* 220.

*Boone v. People*, 36 *N. E.* 99.

*Royce v. The Territory*, 5 *Okla.* 61, 65.

*People v. Briggs*, 60 *How. Pr. Rep.* 17.

*Sparrenberger v. State*, 53 *Ala.* 481, 485.

*United States v. Coolidge*, 2 *Gall.* 367; *Fed. Case No.* 14858.

*United States v. Kilpatrick*, 16 *Fed. Rep.* 765, 773, 777.

*United States v. Edgerton*, 80 *Fed. Rep.* 374, 375, 376.

*United States v. Jones*, 69 *Fed. Rep.* 973, 978.

*McKinney v. United States*, 199 *Fed. Rep.* 25, 27, 28.

*United States v. Cobban*, 127 Fed. Rep. 713, 721.

*Chadwick v. United States*, 141 Fed. Rep. 225, 235.

*United States v. Rosenthal*, 121 Fed. Rep. 862, 873.

*United States v. Gale*, 109 U. S. 65.

*Carter v. Texas*, 177 U. S. 442.

*United States v. Rosenberg*, 7 Wall. 580.

*Holt v. United States*, 218 U. S. 245, 247.

It is believed that the foregoing authorities clearly demonstrate that the power exists in the trial court, to quash the indictment by motion, or by plea in abatement, when the provisions of law requiring the finding of indictments to conform to certain standards have not been complied with. In no other way can the safety and security of the citizen be obtained. In no other way can constitutional and statutory requirements be enforced. If the mere finding and presentment of an indictment is to close all avenues of inquiry as to whether such indictment has been regularly found; if the presence of such indictment in the records of the court is to be a conclusive answer to an assault on the regularity of the proceedings; if such indictment is to have the conclusiveness of a record adjudication of the regularity of the proceedings preceding its finding, constitutional and statutory requirements and safeguards surrounding the organization of grand juries; the manner of its proceedings, and the manner in which indictments should be found, are but paper barriers and are worthless as a safeguard to the citizen, save in so far as they may be voluntarily complied with and conformed to by the prosecuting officers and members of the grand jury. Therefore, it seems to us, that the question sought to be raised by the motion and plea in abatement was raised in the only possible manner, and the demurrer of the United

States to them, admitting the state of facts, renders the only question to be decided by this court, whether the defect pled is of such a nature that the indictment should have been quashed. It seems to us upon the record that the indictment should have been quashed as otherwise there would be no security to citizens against unwarranted presentments.

### **PART III.**

#### **Demurrers.**

The indictment seeks to charge the defendant with having accepted and received concessions whereby property was transported in interstate commerce at less than the lawful rates, and, in certain counts, concessions whereby property was transported at less than the lawful rates and whereby a discrimination was procured by defendant in its favor as against another shipper.

Each count of the indictment was demurred to generally and the counts attempting to charge both a concession and a discrimination were demurred to specially as well, but as the matter urged on general demurrer goes to all the counts, so that if any ground of general demurrer is sustained it will be unnecessary to consider the ground of special demurrer, the grounds of general demurrer will be considered first. They are as follows:

- (a) The indictment fails to set forth facts from which the court is able to judge whether what occurred constitutes an offense against the United States, thus failing to meet a fundamental requirement of criminal pleading, in that said indictment simply following the language of the statute, charges the pleader's conclusion that defendant received a "concession."
- (b) The Elkins Act provides for punishment as a crime of shippers and carriers only, whereas the indict-

ment shows on its face that the defendant is neither.

- (c) The counts which attempt to charge acceptance of concessions during the period of federal control fail to charge an offense.
- (d) Counts 36 to 40 and 81 to 85, both inclusive, are double.

### PART III (a).

**All the counts of the indictment are insufficient in law, in that they wholly fail to state facts sufficient to show that an offense has been committed against the laws of the United States, and that they contain conclusions of the pleader instead of allegations of material facts, and therefore the demurrer should have been sustained.**

A host of authorities can be cited for, and none to the contrary of, the proposition that an indictment based on a statutory offense not an offense at common law will not be sufficient merely following the language of the statute, where the offense is one covered by a generic term or not described by words of art having a settled legal significance.

*Armour Packing Co. v. United States*, 209 U. S. 56, 83, 84.

*Evans v. United States* 153 U. S. 584, 587.

*United States v. Hess*, 124 U. S. 483, 486-489.

*United States v. Britton*, 107 U. S. 655, 668-670.

*United States v. Cruikshank*, 92 U. S. 542, 557-559.

*Ledbetter v. United States*, 170 U. S. 606, 609, 610.

*United States v. Bopp*, 230 Fed. Rep. 723, 726, 727.

*United States v. El Paso & N. E. R. Co.*, 178 Fed. Rep. 846.

*United States v. Brazeau*, 78 Fed. Rep. 464, 465.

Counsel for the Government in the Circuit Court of Appeals attempted to answer this ground with the oft-quoted generality about modern conditions having relieved the Government of the necessity of complying with impractical standards in pleading, but that is no answer to the authorities above cited.

The contention here made does not require any impractical standard of the Government, but merely that what it conceives to be an offense be stated not in legal conclusions but in plain facts, to which *the court* may apply *its* construction of the law to see whether an offense exists, rather than that the pleading shall rest merely on the *prosecutor's conception* of what constitutes an offense.

As has been stated over and over again by this Court, where "generic" terms are used in the statute, the indictment must descend to particulars, and in any case an indictment must contain "every element necessary to make up the offense."

It needs no argument to show that the word "concession" is a generic term. The decided cases under the Elkins Act embrace, as offenses coming within the term "concession," instances of free demurrage, collection at less than the lawful rate with or without a device, rebates with or without devices, extension of credit, and many other acts construed to be within the description "concession." It is manifest therefore that the word is a generic word, and, consequently, to meet the requirements of the cases in this respect it is not enough merely to use the language of the statute, but particulars of what transpired must instead be stated; that is, whether the defendant, by agreement with the carriers, simply in the first instance paid less than the lawful rate, or whether it paid the full legal rate and subsequently accepted a return of a portion thereof by the carrier, or whether it received something else of value in connection



with the transportation instead of money, the effect of which was a concession.

It will be observed that the indictment fails utterly to meet this requirement, and there is substantial reason why it is essential that it should do so. It is not only conceivable but, as will be demonstrated by an analysis of the *Lehigh Coal & Navigation Company case*, 250 U. S. 556, it is the fact that it was the Government's conception at the time these indictments were drawn of what would amount to a concession under the Elkins Act, that any departure from the rates, conscious or otherwise, would amount to such concession. Yet the case just mentioned squarely shows the error of this view.

The word "concession" is defined by the Standard Dictionary as "the act of conceding; or that which is conceded." Obviously, therefore, an "element" of a concession is the conscious voluntary conceding by the carrier to the shipper of some thing. If the carrier was defrauded by the shipper, this clearly would not be a concession. This is not saying that such fraud would not be punishable, as it of course would under section 10 of the Interstate Commerce Act (upon which charge another indictment is pending in the District Court), but it would not be punishable as a concession under the Elkins Act.

It is clear, therefore, that it is necessary, in order properly to plead the offense of concession under the Elkins Act, so that the court may see that the facts amount to such an offense, that the indictment show that the carrier consciously voluntarily conceded that which it is claimed the receipt of constituted a concession.

Here, the indictment not merely fails to aver that the carrier conceded anything, but it even fails to show what as a matter of fact it is intended to allege the defendant accepted. That the offense of a concession under the Elkins Act must embrace the element of conscious voluntary giving by the carrier does not rest upon the foregoing argument alone, is shown by an examination of the

reported cases construing the Elkins Act. In quite a number of such cases, the question was presented upon the construction of the words "knowingly and wilfully," and it will be found that in each such case the element of conscious giving by the carrier was present—sometimes in the shape of a rebate, sometimes under an express agreement to carry at less than the lawful rate, and sometimes by the devices set forth.

The following are excerpts from a number of cases construing the Elkins Act, and it will be found that this "element" is present in every one of such cases:

In *Lehigh Coal & Navigation Co. v. United States*, 250, U. S. 556, the court says:

"The questions asked depend upon the construction of the Elkins Act, as enacted in 1903 (32 Stat. 847), the relevant part of which is as follows: ' \* \* \* It shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall *by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier* (italics ours) \* \* \*.' And under an amendment in 1906 (34 Stat. 584), an offender, 'whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebate, concession, or discrimination shall be deemed guilty of a misdemeanor.'

"The way to a correct construction of the act was to an extent cleared by the case of *Armour Packing Co. v. United States*, 209 U. S. 56. Its evolution was there detailed. It was said that carrier and shipper are charged with an equal responsibility and liability and that the act 'proceeded upon broad lines' to accomplish this equal-

ity, and 'that the only rate charged to any shipper for the same service under the same conditions should be the one established, published and posted as required by law.' And this was declared in various ways to be the test of obligation and liability and the 'form by which or the motive for which' its evasion or disregard is accomplished is not of modifying or determining consideration. It was in effect decided that the purpose of the statute took emphasis and meaning from the use of the word 'device,' and 'device' was defined to be 'anything which is a plan or contrivance' and is 'disassociated' from qualification and 'need not be necessarily fraudulent,' and by it the act sought 'to reach all means and methods by which the unlawful preference of rebate, concession, or discrimination is offered, granted, given or received.'

"It is in effect the contention of the Government that the language of the case exhausts definition and excludes the supposition of the questions of the Circuit Court of Appeals. We are unable to concur. The language of the case is easily explained by the question that was presented for decision. The Armour Packing Company contended that the act was directed only at fraudulent conduct, the obtaining of a rebate by some dishonest or underhand method, concession or discrimination. The language of the court was addressed to this contention and its selection and adequacy are manifest.

"No such contention is made in the case at bar and there are other distinguishing elements. It will be observed that by the statute and decisions the test of equality is the tariff rate. It was said in the opinion that it is 'the purpose of the act to punish those who give or receive transportation, in the sense of actual carriage, at a concession from the published rates' (*New York Central R. Co. v. United States*, 212 U. S. 500, 505). And such was the offense of the Armour Packing Company. There was no evasion of the tariff rate in the case at bar. The filed tariff indicated the existence and obligation of the 10th covenant of the

lease from the Company to the Railroad, that is, the fact of the allowance was declared, though it did not have the specification in figures. The tariff, of course, would have been more definite and complete with such specification, but its sufficiency was certainly believed in, for between 1906 and the date of the indictment it had 262 repetitions. The Company was given besides the assurance that it had the sanction of the Interstate Commerce Commission.

"There was no attempt at deception. The Commission knew by examination of the Company's books of the allowance and the amount of the allowance. Such, then, is the situation, and distinguishes the case from the *Armour Packing Company* case. There there was an omission to comply with the statute and the omission was attempted to be justified by honesty of motive and purpose; here there was compliance or attempted compliance with the statute—a tariff filed—and if a question could be raised upon its legal sufficiency the belief of the Company in its legality was supported by high authority and those circumstances can bring into action and exculpatory effect the provision of the statute which requires the acceptance of a rebate to be 'knowingly' done to incur the guilt of a misdemeanor. This conclusion gives no detrimental example against the efficacy of the law.

"We think this comment and conclusion enough to dispose of the questions asked and that there is no necessity to review the cases cited by the Company or the Government" (250 U. S. 562-565).

"The indictments in both cases were framed under Section 1 of the Elkins Act before it was amended, and it was held to be unnecessary to set forth the particular device by which the concession or rebate had been granted.

"Reference to the indictment in the case at bar shows that all of the allegations which were considered in the case last cited, as sufficient to sustain the indictment there under consideration, are present here, except the subsequent payment of the

rebate. *But, in lieu of that and in conformance with the facts, it alleges the charging and payment of a lower rate than that provided in the filed schedule or tariffs. The Elkins Act originally made a carrier who should offer, grant or give a rebate, concession or discrimination criminally responsible. This was amended by the Hepburn Act, so that the carrier, to be criminally liable, must knowingly, offer, grant or give a rebate or concession or discrimination."*

*United States v. Erie R. R. Co., 222 Fed. Rep. 444, 445, 446, 448.*

See, also:

*United States v. Cleveland, C. C. & St. L. Ry. Co., 234 Fed. Rep. 178, 186.*

*United States v. Philadelphia & R. Ry. Co., 232 Fed. Rep. 946, 949, 951, 952.*

*United States v. Philadelphia & R. Ry. Co., 232 Fed. Rep. 953, 954-956.*

*Standard Oil Co. of N. Y. v. United States, 179 Fed. Rep. 614.*

*United States v. Standard Oil Co., 170 Fed. Rep. 988.*

*Standard Oil Co. of Indiana v. United States, 164 Fed. Rep. 376, 381-383.*

*United States v. Stearns S. & L. Co., 165 Fed. Rep. 735, 736.*

*United States v. Bunch, 165 Fed. Rep. 736, 740, 741.*

In *Atchison, T. & S. F. Ry. Co. v. United States*, 170 Fed. Rep. 250, there was involved an indictment on a charge of granting a concession. That case squarely holds that intent of the carrier is of the essence of the offense, and that any departure from its established rates must be wilful in order to constitute a crime. The

lower court was reversed expressly because of its having charged the jury, after striking out the evidence in relation thereto, that it was immaterial that the alleged departure was not intended as such, but consisted in an allowance with respect to alleged loss. The case repeatedly states that for a "departure" to amount to a concession, it must be so intended by the carrier.

In *United States v. P. Koenig Coal Co.* 1 Fed. (2d) 738, the precise question here under consideration was involved, and a demurrer sustained to an indictment charging a concession under the Elkins Act, where, as here, there were no facts pleaded upon which the Court could see that there was a conscious yielding or grant by the carrier. In his opinion, District Judge TUTTLE says (p. 740):

"The sole question, however, with which this court is now concerned is whether such conduct constitutes the acceptance or receipt of a 'concession' from a common carrier railroad, as denounced by the statute invoked by the government.

"It is an elementary rule of statutory construction that, in the absence of circumstances indicating otherwise, words used by a legislative tribunal in the enactment of a statute are to be considered as having been so used according to their usual, ordinary meaning.

"The common dictionary meaning of a 'concession' (as illustrated by the definitions in the Century and in Webster's International dictionaries) is 'the act of conceding or yielding, usually implying a demand, claim, or request,' 'a thing yielded,' 'a grant.'

"Now, nothing could be clearer than that, under the express allegations of the indictment involved, the advantage obtained is explicitly declared to have been received by the defendant from the carriers, not as a benefit yielded or consciously granted by them, but solely through and by means of deception practiced upon them by the defendant. The government charges in sub-

stance that the carriers were tricked by the defendant into transporting this coal, which they would not have done 'but for said device and deception.' To say, under these alleged circumstances, that the carriers thus imposed on by the defendant and fraudulently induced to transport this freight were thereby actually granting (although unknowingly) to the defendant a 'concession,' or that the defendant was thereby receiving from such carriers a 'concession', is, in my opinion, to do violence to the plain meaning of language and to fail to call things by their proper names. If an advantage obtained by such artifice and fraud be a *concession* accepted or received by the deceiver from his victim (and, therefore, necessarily granted or given, even although unknowingly, by the deceived), then the hobo who steals a ride on the 'bumpers' of a railroad car thereby receives and accepts a concession given him by such railroad, and the thief who picks the pocket of a conductor on a train knowingly accepts and receives a concession 'given' him, though not knowingly. I can perceive no real difference nor distinction in the underlying principles involved in the instances just suggested. In essence they seem to me to be the same. Although I am aware that in the only reported decision, so far as I can learn, involving this precise question (that of the District Judge in *United States v. Metropolitan Lumber Co.* (D. C.) 254 Fed. 335), a contrary opinion was reached, I am unable, after careful study of that decision, to approve or accept the conclusions there expressed. I cannot avoid the conviction that they embody, and are based upon, the reasoning to which I have already referred and with which I cannot agree.

"A careful reading of the Elkins Act leaves no doubt that its purpose was to punish and prevent the favoritism of shippers by common carriers in interstate commerce, and that, in order to more effectually accomplish this purpose Congress, after originally legislating against only the carriers who granted such favoritism, extended its prohibitions, so as to reach also the recipients of, and par-



ticipants in, such favoritism, namely, the shippers who, by knowingly accepting or receiving such unfair favors, promoted and made them possible. In the language of the report of the committee on interstate commerce in reporting the bill to the House (which report, of course, is entitled to consideration in the judicial construction of the statute), the committee believed that the Elkins Act, together with the Interstate Commerce Law then existing, covered about all possible means 'to prevent the granting of discriminations in favor of one shipper against another, or the building up of one concern through the favoritism of railroad corporations.'

"Nor is it without significance, as bearing upon the meaning of this statute, that an entirely different statute (section 10 of the Act of Feb. 4, 1887, c. 104, 24 Stat. 382, as amended [Comp. St. sec. 8574], expressly forbids the obtaining of various kinds of rebates by means of false statements, 'whether with or without the consent or connivance of the carrier,' being apparently intended by Congress to relate to an evil not also covered by any other statutory provision.

"In view of the considerations mentioned, and bearing in mind that the penal statute involved should be construed strictly, and limited to the plain meaning of the language used, I reach the conclusion that it cannot properly be so extended as to include within its prohibitions the conduct charged against the defendant by the indictment at bar.

"For the reasons stated, the demurrer must be sustained on the first ground therein presented, namely, that the acts alleged in the indictment do not constitute the offense charged. There is therefore no occasion to consider the objections urged to the validity of the service order involved. An order will be entered sustaining the demurrer."

It should be remembered in this action that the Government, throughout the trial and in summing up, in-

sisted that the defendant had defrauded the carriers in the transactions involved in the indictment, which insistence upon the part of the Government is itself assigned as error, and so found by the Circuit Court of Appeals.

Manifestly it cannot be consistently argued in one breath that the defendant deceived and defrauded the carriers, thereby obtaining an advantage, and in another breath that the defendant received a concession from a conscious yielding by the carriers.

The point made under this subdivision is that the indictment not only nowhere alleges facts, or even a conclusion, that the carrier voluntarily conceded that which it is claimed the defendant obtained; and facts are not even alleged that the defendant received anything—merely the bald conclusion of the pleader that it obtained a concession. There is no allegation that a certain rate was paid, and thereafter a refund of a portion of it made, or that a lower rate was collected than that legally applicable, or any other manner or form of concession described.

*United States v. Peterson, 1 Fed. (2d) 1018.*

### **PART III (b).**

**The Elkins Act provides for punishment as a crime of shippers and carriers only, whereas the indictment shows on its face that defendant is neither.**

The indictment, after setting forth the existence of the routes and rates, and the shipment by the Gypsy Oil Company of certain cars to the Gulf Refining Company at Port Arthur, then charges that freight charges in a certain amount (computed at the rate mentioned upon the weight of the shipment described):

“became due and payable and became a lawful debt and liability of the said Gulf Refining Com-

pany and payable to the said common carriers for the transportation."

There is not a word of explanation in the indictment as to why or how this sum "became a lawful debt and liability" of the said Gulf Refining Company, that being purely the pleader's conclusion.

The indictment clearly shows that the Gypsy Oil Company was the shipper of the substance shipped. It does not show or state under what conditions the substance was shipped, as to payment of freight, whether freight was prepaid; whether the freight was to be collected by the railway company from the consignee at the end of the shipment, is not stated as a fact. So far as any statement of fact in the indictment is concerned, it is silent. The facts as pled in the indictment, show a legal duty and obligation resting upon the Gypsy Oil Company to the railroad company for the payment of the freight. There was no contractual relation between the Gulf Refining Company and the railroad. What, if any, liability could attach to the Gulf Refining Company for freight on such shipments, is left to conjecture. The pleader attempts to cure this. It is sought to be covered by the above quotation, which is certainly a conclusion of the pleader and not the statement of facts upon which such conclusion rests. It is evident (1) that so far as the statute itself embraces liability for freight as a matter of law, such liability is imposed upon the shipper and not the consignee. The shipper makes the contract of shipment, not the consignee. The mere shipment of freight, whether accepted or not, would create a liability on the part of the shipper to the carrier of freight. No such liability could rest on the consignee unless goods shipped were shipped with freight collect, and his acceptance of the goods would thereby raise an implied agreement on his part to pay. Again, if the goods were shipped with freight unpaid,

the carrier would have a lien on the goods for his freight and other charges, and the surrender by the carrier of such goods, to the consignee, and the consequent loss of his lien on the goods, would create a liability on the part of the consignee to pay, which would be supported by the consideration that the consignee received the goods and the carrier had lost his lien. No facts are stated in the indictment which would raise such a condition. Outside of the general conclusion of the pleader, no fact is stated which shows liability on the part of the Gulf Refining Company. Outside of the conclusion of the pleader, there is nothing from which anyone can conclude any legal liability on the part of the Gulf Refining Company; nothing that negatives the idea of the primary liability of the shipper, in this case, the Gypsy Oil Company; nothing that negatives a presumption that the goods were shipped freight prepaid. The words, "became a lawful debt and liability" are so evidently a conclusion, that it is scarcely worth while to argue that it is not a statement of fact. It is not for the pleader to determine whether the freight "became a lawful debt and liability" of the Gulf Refining Company, but the indictment to be good must state such facts as will enable the court on an inspection of it, to say as a matter of law, that on the facts so stated the freight mentioned in the indictment "became a lawful debt and liability."

(2) Again, we contend that the indictment in this case should have been quashed for the reason it clearly appears on the face of the indictment, that Gypsy Oil Company is the shipper and the Gulf Refining Company the consignee, and, under the Act of February 19, 1903, as amended by the Act of June 29, 1906, it is the shipper and the carrier that can be indicted, and only these persons, under the circumstances stated in the indictment.

We think this is evident from the language of the two acts and therefore set them out so far as the same

are here relevant. The Act of February 19, 1903, 32 Statutes at Large, 847, provides:

“and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive, any rebate, concession or discrimination in respect of the transportation of any property in interstate or foreign commerce, by any common carrier, subject to said Act to Regulate Commerce and the acts amendatory thereto, whereby any such property shall by any device whatever, be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and acts amendatory thereto; or, whereby any other advantage is given, or discrimination is practiced. Every person or corporation who shall offer, grant or give, or solicit, accept or receive any such rebates, concessions or discrimination, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than \$1000.00 or more than \$20,000.00.”

It will be seen from the above statute that every person, etc., that had anything to do with the unlawful transaction, were made subject to indictment. The Act of June 29, 1906, 34 Statutes at Large, 584, commencing at the bottom of page 587, provides as follows:

“and it shall be unlawful for any person, persons, or corporation, to offer, grant, or give, or to solicit, accept, or receive, any rebate, concession or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to Regulate Commerce and the acts amendatory thereof, whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier as is required by said Act to Regulate Commerce and the acts amendatory thereof, or whereby any advantage is given or discrimination

practiced. Every person or corporation, whether carrier or shipper, who shall knowingly offer, grant, or give, or solicit, accept, or receive, any such rebates, concession, or discrimination, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$1000.00 or more than \$20,000.00."

It will be noticed that the only difference in this act and the Act of February 19, 1903, is that where the Act of February 19, 1903, uses the word "thereto," the above act uses the word "thereof," and in the portion of the act defining the misdemeanor, the above statute inserts the words "whether carrier or shipper," and the word "knowingly," so it seems evident that there could be but two purposes that Congress had in view in the amendment last above cited, for with the exceptions above named, the two acts are identical. The purposes intended to be wrought by this amendment, it seems to us, are two: (a) First, the act denounced as criminal, must be knowingly committed; and (b) the words "whether carrier or shipper" could have been inserted for only one purpose, and that was to limit the generality of the language preceding such words and limit the generality of the act it amends. The words immediately preceding "whether carrier or shipper," are broad enough to embrace every person who could by any possibility have any connection with the transaction, for they are sufficiently broad to include every person, natural or artificial in being. Therefore, the words "whether carrier or shipper" could not have been introduced for the purpose of making more general or more embracing, the preceding portion of the statute. Therefore, it follows that they must have been introduced for the purpose of limiting the class who could be guilty of a misdemeanor. Before defining the misdemeanor, the act just cited, as well as the act which it amends, declares without limitation that it shall be unlawful for any per-

son, persons, or corporation to do any of certain specified acts, but this generality is limited when it comes to define and set out and make criminal the act declared to be unlawful. This seems to us to be not without reason. The acts merely declared to be unlawful, are necessary for the protection of the public, and those acts so declared to be unlawful, can, in proper cases, be enjoined by the court in the exercise of its equitable powers. They may be the basis for an action for the recovery of damages, an action for reparation, but when it comes to define the crime, then Congress, it seems to us, has wisely limited the crime to the two persons who ordinarily could be the only persons guilty—the shipper and the carrier.

*Tucker v. St. Louis-San Francisco Co.*, 233 S. W. Rep., 512.

### PART III (c).

**Counts 36 to 40, inclusive, 65 to 80, inclusive, and 80 to 100, inclusive, of the indictment, covering shipments during federal control, are bad both in pleading and in substance.**

The above-numbered counts all relate to shipments transported during federal control. It is contended under this point that they are bad as matter of pleading in alleging that the named carriers had published and filed the rates alleged to have been in effect, and had performed the transportation, and that the defendant had accepted and received concessions from said named carriers, instead of alleging that the rates had been published, or at least adopted by the Director General or the United States, that the transportation had been performed by him, and the concession obtained from him.

It is also contended that the Elkins Act had no application to shipments transported during federal con-



trol, and that consequently the counts are bad in substance as well.

The counts are substantially similar, except that certain of them, in addition to attempting to charge concessions, also attempt to charge discrimination, both in violation of the Elkins Act.

By reference to the first of these counts, 36 (*Rec.*, p. 53), it will be observed that it charges that on and prior to December 28, 1917, the Midland Valley, the Kansas City Southern and the Texarkana & Fort Smith railway companies were each corporations and

“operated connecting railway routes and were common carriers engaged in the transportation of property, including gasoline, for hire over their connecting railway route,” etc.,

from Kiefer, Oklahoma, to Port Arthur, Texas, and so subject to the Act to Regulate Commerce (II); that on December 26, 1917, the President, by proclamation, assumed

“control of certain systems of railway transportation, including the railway routes of the three common carriers aforesaid, and did in said proclamation direct that the control, operation and utilization of such transportation systems should be exercised by and through the Director General”,

and that from December 28, 1917, to June 1, 1918,

“said railway routes and lines of transportation of the three said common carriers were controlled, operated and utilized by the Director General of Railroads, which control, operation and utilization is herein termed federal control”. (III).

That from January 1st to June 1st

“said three common carriers under federal control had printed and had filed with the Interstate

Commerce Commission of the United States, and had published, schedules and tariffs of rates and charges \* \* \* which showed that the lawfully established rate for the transportation of gasoline"

from Kiefer

"over the aforesaid connecting through railway route"

to said Port Arthur, was 33 cents for each 100 pounds. (IV). That throughout said period the Texas Company was engaged in shipping gasoline from Kiefer over the aforesaid through railway route to Port Arthur, and at divers times did ship large quantities of gasoline from Kiefer to Port Arthur

"at the said lawfully established rate of thirty-three cents per hundred pounds"; (V).

That during said period, on January 25th

"and while the aforesaid schedules and tariffs of rates and charges were in force and effect,"

the Gypsy Oil Company, at Kiefer,

"did deliver to the said common carriers under federal control, for transportation, a large quantity of gasoline,"

etc., and that pursuant to instructions given by it

"the said common carriers under federal control did transport said gasoline in said tank cars over the aforesaid through railway route," etc.; "that thereupon freight charges in the amount of \$1,760.19, at the aforesaid lawfully established rate of thirty-three cents for each 100 pounds thereof, became payable and became a lawful debt and liability of said Gulf Refining Company, payable to said common carriers under federal control, for the transportation", etc. (VI).

That on February 21, 1918, said Gulf Refining Company  
 “unlawfully did knowingly accept and receive  
 from the said common carriers under federal control a concession in respect to the transportation of the last mentioned shipment \* \* \* and whereby a discrimination was practiced in favor of said Gulf Refining Company,” etc. (VII).

It will be observed that throughout the count attempts to charge that the rates claimed to be the legal rates were published, printed and filed by

“said three common carriers under federal control”;

that the transportation was performed by them, and that the alleged concession was received from them in the face of the fact that it charges in the third paragraph that their properties were under federal control and were operated by the Director General. The phrase “under federal control” does not help the expression. It cannot refer to the Director General, for he could not be *three* common carriers. The second paragraph distinctly describes the corporations as being common carriers, and names three of them, and they are the only persons referred to or described as common carriers. The expression “common carriers under federal control”, used in the indictment, was undoubtedly taken from that expression as used in the Federal Control Act (March 21, 1918; Chap. 25, 40 Stat. L. 451; Comp. Stat., Sec. 3115  $\frac{3}{4}$ a; Fed. Stat. Ann. Supp. 1918, p. 757).

As this Court said in *E. I. Dupont de Nemours & Co., Pet’r. v. James C. Davis, Director General*, etc., 264 U. S. 456, decided April 7, 1924, 68 L. Ed. 788, that statute

“repeatedly recognizes a distinction between the President—including, of course, the Director

General—and the carriers. The first section itself limits the meaning of the word ‘carriers’ to railroads and systems of transportation which, as carriers, had been taken over by the President. Accurately speaking, the Director General was not a carrier, but an operator of carriers. The distinction to which we have referred constantly appears in the provisions of the act, as, for example: ‘The President may, nevertheless, pay to any carrier while under Federal control an annual amount,’ etc., Sec. 2; ‘On the application of the President or of any carrier,’ etc., Sec. 3; ‘Carriers while under Federal control shall be subject to all laws and liabilities as common carriers,’ etc., Sec. 10; ‘Actions at law or suits in equity may be brought by and against said carriers,’ etc., Sec. 10; ‘Moneys and other property derived from the operation of the carriers during Federal control are hereby declared to be the property of the United States,’ Sec. 12.”

As this Court has so definitely held that the expression “carriers under Federal control” does not mean the Director General, it follows that the pleading of the indictment in these counts is quite erroneous. Assuming, though not conceding, that a charge of obtaining a concession or discrimination might properly lie during federal control, it follows that it would be necessary for the indictment to allege that the United States or the Director General had published and filed the rates—or adopted those theretofore published and filed by the carriers—and that the concession had been obtained from the United States or the Director General.

Apart from the question of pleading, it is also contended here that the Elkins Act had no application to transactions during federal control. This both by the letter of the statute and in reason.

The Elkins Act (32 Stat. L. 847), as amended by the Act of June 29, 1906 (34 Stat. L. 584), provides that

"it shall be unlawful for any person, persons, or corporation, to offer, grant or give, or to solicit, accept, or receive any rebate, concession or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce \* \* \*."

Clearly the United States, acting as it did in its sovereign capacity, cannot be said to be a common carrier.

In the *Dupont case*, *supra*, this Court said:

"In taking over and operating the railroad systems of the country the United States did so in its sovereign capacity, as a war measure, 'under a right in the nature of eminent domain' (North Carolina R. Co. v. Lee, 260 U. S. 16, 67 L. ed. 104; Missouri P. R. Co. v. Ault, 256 U. S. 554, 65 L. ed. 1087; Northern P. R. Co. v. North Dakota, 250 U. S. 135, 63 L. ed. 897; Re Tide Water Coal Exchange, 280 Fed. 648, 649); and it may not be held to have waived any sovereign right or privilege unless plainly so provided." (68 L. Ed. 791).

See, also:

*Northern Pacific Ry. Co. v. North Dakota*, 250 U. S. 135.

In the *Dupont case*, *supra*, it was contended that the Director General was a common carrier subject to the Act, and as such barred by the three-year statute of limitations contained in Section 16 of the Interstate Commerce Act, reading:

"All actions at law by carriers subject to this Act for recovery of freight charges or any part thereof shall be begun within three years from the time the cause of action accrues, and not after."

In its opinion, this Court said:

"It is insisted that the United States—by the Director General representing the United States—is included in the provision as a carrier subject to the Act. Our opinion is otherwise."

It is difficult to give a general definition of the term common carrier without including within the definition certain duties of, and the rules of law applicable to the transaction of the business. It may be defined, generally, however, as one who engages to transport for hire from place to place goods of such persons as choose to employ him, and its distinctive characteristic is that the undertaking is to carry for all persons indifferently the goods he is accustomed to carry and, therefore, in some measure is considered as a public servant.

In *The Niagara v. Cordes*, 21 Howard 7, 16 L. ed. 46, this Court defines the term as follows:

"A common carrier is one who undertakes for hire to transport the goods of those who may choose to employ him, from place to place. He is, in general, bound to take the goods of all who offer, unless his complement for the trip is full, or the goods be of such a kind as to be liable to extraordinary danger, or such as he is unaccustomed to convey."

In *The Cape Charles*, 198 Fed. 346, at page 349, defining a common carrier, the court says:

"The distinction which marks a common from private carrier is clearly defined. A common carrier is one who openly professes to carry for hire the goods of all such persons as may choose to employ him. Redman's Law of Railway Carriers (2d ed., 1880) 1. In some cases it is said that the test whether one comes within the definition of a common carrier is whether he holds himself out to carry goods for every one who applies to him.

SIMPSON, C. J., says: 'The true test of the character of the party, as to the fact whether he is a common carrier or not, is his legal duty and obligation with reference to transportation. Is it optional with him whether he will or will not carry for all? If it is his legal duty to carry for all alike who comply with the terms as to freight, etc., then he is a common carrier, and is subject to all those stringent rules which, for wise ends, have long since been adopted and uniformly enforced, both in England and in all the states, upon common carriers.' *Piedmont Mfg. Co. v. Columbia etc. R. Co.*, 19 S. C. 353; 16 Am. & Eng. R. R. Cas. 194. A private carrier is one who, without being engaged in such business as a public employment, undertakes to deliver goods in a particular case for hire or reward. *Pennewill v. Cullen*, 5 Har. (Del.) 238."

In *Woods Railway Law*, page 563, section 195, it is said:

"At common law *every common carrier is bound to receive goods from all persons alike without making any personal distinction, without giving any unjust or unreasonable advantage by way of facilities for the carriage or rates for transporting them*, and statutes prohibiting discrimination are held as merely confirmatory of the common law."

In 6 *Cyc* 372, it is said:

"Common carriers owe to the public the duty of carrying *indifferently for all who may employ them and in the order in which the application is made and without discrimination as to terms.*"

In *Mershon et al. v. Hobensack*, 22 N. J. Law 372, the court says:

"Every person who undertakes to carry for compensation the goods of *all persons indifferently is a common carrier.*"



In *Maslin v. Baltimore etc. Ry. Company*, 14 W. Va. 180, at page 188, the common carrier is defined as follows:

“One who undertakes for hire to carry from place to place the goods of all persons indifferently.”

In *Hutchinson on Carriers*, section 47, the definition is as follows:

“One who undertakes as a business, for hire or reward to carry from one place to another the goods of all persons who may apply for such carriage.”

In *Watkins on Shipments and Carriers*, (3rd ed.) volume 1, section 36, page 220, it is said:

“It is axiomatic that a common carrier is not at liberty to accept or decline shipments or to accept or decline passengers.”

In the same volume, section 61, page 275, it is said:

“The duty of a common carrier to transport, at reasonable rates, exists at common law. This was, and is, true because the business of carriage for the public is of a quasi-public nature and the charges therefor are subject to the regulation by the public.”

To the same effect see:

*Gisbourn v. Hurst*, 1 Salk. 249, 91 Rep. 220;  
*Orange Bank v. Brown*, 3 Wend (N. Y.) 158;  
*Jackson Architectural Iron Works v. Hurlbut*,  
 158 N. Y. 34, 38, 52 N. E. 665;  
*The Huntress*, 12 Fed. Cases No. 6914;  
*2nd Chitty's Blackstone*, (Am. ed 1830) 451  
 Note 22;  
*1st Leigh*, N. P. 507.

Authorities to like effect could be multiplied indefinitely, but we assume multiplication to be unnecessary.

It necessarily and conclusively follows from the above and foregoing authorities that the term common carrier means one who operates an instrumentality of transportation, who possesses certain characteristics and on whom the law imposes certain duties and casts certain obligations which inhere in the very definition of the term and in the very nature of the business. That these duties and obligations are imposed under a sanction, and chief among such duties and obligations is that to transport for all without preference, and to receive, transport and deliver goods, without discrimination as to facilities, and the absence of these distinguishing features, the legal power to disregard and hold for naught such duties and obligations inhering in the very nature and character of the business must destroy, and, of necessity, does destroy, the character of a carrier as being a common carrier. Carriage cannot be said to be *common when the carrier possesses the power of selection; it cannot be said to be indifferent when the power of preference and precedence exists; it cannot be said to be obligatory when the power of denial or election exists; yet, in the transportation of property over the railroad systems under federal control, the United States possesses the power of selection, the power to transport for one and deny transportation to another; the power of preference and precedence exists as to such states in transporting property, and, therefore, in no just sense of the term can the United States in the control of the railway systems of the country be said to be a common carrier.*

Again, the very circumstances under which the United States assumed control of the railroads and the purposes sought to be accomplished thereby are such as of necessity preclude the idea that *it assumed the duties and obligations of a common carrier, for the chief reason, if not the sole reason of such assumption, was to free trans-*

portation of the hampering fetters, restrictions and obligations inhering in the very nature of the business of a common carrier, and to permit transportation to be had without reference to such trammels, and the exercise of the general right of transportation freed from such restrictions was considered a power too great, a power too susceptible of abuse, too fraught with possibilities of evil to be entrusted even to persons of quasi-public character *and could only safely be confided to and exercised by the federal government*. These reasons account for the federal control acts and why the government was directly put in operation of the railroads and the railroad companies not permitted to operate the railroads under governmental direction.

To hold that in the assumption of control of railroads and the transportation of goods, etc., over them, the government is a common carrier, is, it seems to us, by judicial ukase, to defeat the legislative purpose and destroy the congressional intent in conferring such power. *For the very purpose of the assumption, the obvious necessity of federal control was to free the transportation systems from the hampering and fettering duties and obligations of common carriers and permit the government to carry on the business of transportation freed of the restraints that were "harassing but unavoidable"* so long as such systems were operated by private enterprise and under control of private corporations; was to give the United States the absolute, unlimited and unfettered right to operate and use such systems, not only for the purpose of transporting troops, munitions and war equipment and material, *but to give priorities to private shippers who were only remotely, if at all, connected with the government, and indeed to prohibit certain freight movements entirely*. To regulate and control shipments so the necessities of different communities could be supplied without material interference with the desire, if not the absolute duty of supplying the necessities of our allies.

The United States acquired the right of possession and control of the country's transportation systems under and by virtue of the Acts of Congress of August 29, 1916, and of March 21, 1918. The purpose of each act being, as they on their face disclose, to confer such power as a war measure and at the time of taking possession and control, December 28, 1917, the United States was actually engaged in war and the acts are war measures and their validity rests and depends upon the war powers of the government. This is apparent from an inspection of the acts and is so declared by the courts. In *Northern Pacific Railway Company v. North Dakota*, 250 U. S. 135, at page 149, the court says:

"On the face of the statutes it is manifest that they were in terms based upon the war power, *since the authority they gave arose only because of the existence of war*, and the right to exert such authority was to *cease upon the war's termination*. To interpret, therefore, the exercise of the power by a presumption of the continuance of a state power limiting and controlling the national authority was but to deny its existence. It was akin to the contention that the supreme right to raise armies and use them in case of war did not extend to directing where and when they should be used."

The Act of August 29, 1916, authorizes the President in time of war "to take possession and assume control of any system or systems of transportation, or any part thereof, and to utilize the same *to the exclusion, as far as may be necessary, of all other traffic thereon*, for the transfer or transportation of troops, war material and equipment, *or such other purposes connected with the emergency as may be needful or desirable*." This, in effect, makes the United States through its President the sole arbiter of the use of said systems for he, and he alone, is the sole and supreme judge of whether the use or purpose to which the systems are put is "connected with the

emergency". The President and the Director General alone determine whether the use or purpose "connected with the emergency" to which the systems are put, is a purpose or use that is or "may be needful or desirable". His discretion, his judgment in such regard being the sole criterion, his control is absolute. Perfect freedom of action is conferred, except as restrained by his judgment as to what "may be needful or desirable". He is not compelled as a public agent to give "equal treatment to all". Under this grant of power in regard to the act to regulate commerce, he can "set" all "its provisions at naught" as he has done some of its provisions by Order No. 1, dated December 29, of the Director General, wherein it is ordered:

"The designation of routes by shippers is to be disregarded when speed and efficiency of transportation service may be thus prompted."

This order confers upon "subordinate agencies" the power to abrogate and "set at naught" paragraph 8 of section 15 of the act to regulate commerce wherein the right of selection and determination of routes "in all cases" is conferred on the shipper and compliance with the shippers' designation made mandatory on the carrier. Such a carrier "engaged in Interstate Commerce" is not "subject to the commands of the statute" regulating commerce, and, therefore, falls without the statutory definition of "common carrier, subject to this act."

Again, we have the same result by reason of the authority to exclude, as far as necessary, all traffic other than that directly relating to the war and to give priority to certain shipments, the power thus given being absolute, subject to no regulatory law.

By the Act of March 21, 1918, Congress states that the President had "in time of war taken over the possession, use, control and operation of certain railroads and systems of transportation" and the assumption of such con-

trol is ratified. (Section 1.) The control thus assumed by the President and ratified by Congress was absolute and unhampered by any legislative regulatory measures. In his proclamation of December 26, 1917, the President stated that he takes possession and assumes control of the systems in order that the systems "be utilized for the transportation of troops, war material and equipment to the exclusion, as far as may be necessary, of all other traffic". In and by the proclamation, a Director General was appointed to exercise all the powers of the President under the act. The proclamation retained and asserted the unlimited power conferred by Congress by expressly providing that the Director General might, at any time, by general or special order, change in any respect the existing order of things, and providing that "any orders, general or special, hereafter made by the Director General, shall have paramount authority and be obeyed as such", notwithstanding any existing statute or orders to the contrary.

The first eight sections of the Act of March 21, 1918, provide for the payment of just compensation to the owners of the systems of transportation taken under federal control, and all earnings of the railroads while under federal control are declared to be the property of the United States. Except as modified and restricted by the Act of March 21, 1918, the Act of August 29, 1916, is continued in full force and effect by section 9 of the Act of March 21, 1918, and in addition to the powers conferred on the President by the act, he is given "such other and further powers necessary or appropriate to give effect to the powers herein and heretofore conferred." It is thus readily seen that the power so conferred upon the President in the control and operation of such systems is absolute and unlimited.

The principal purpose of these acts was to enable the doing by the President of the very things which the Act

to Regulate Commerce and the Elkins Act intended specifically to prohibit the corporate common carriers from doing.

The Act to Regulate Commerce requires the publication and filing of tariffs to be done on thirty days' notice. The Federal Control Act authorizes it to be done whenever the President sees fit, and denies to the Interstate Commerce Commission the right to suspend such. The Elkins Act prohibits preferences and discriminations; the Federal Control Act expressly authorizes the granting of priorities and preferences.

It is a matter of common knowledge that during federal control priority in shipment was accorded the traffic of hundreds of individual shippers, which, if the Interstate Commerce Act was in effect, would have been directly contrary thereto; no one would have the hardihood to claim that the Director General of Railroads (or the President, whose agent he was) would be indictable therefor, and it would be quite as absurd to conclude that though the agents of the sovereign might lawfully give, the recipient would commit a crime in accepting.

It would seem to be clear that the United States was "neither a common carrier" nor "subject to said Act to Regulate Commerce", and consequently not within the language of the Elkins Act. It is not a question whether Congress might have so amended the Act as to bring the obtaining of concessions during federal control within the provisions of Section 10, for instance, of the Interstate Commerce Act, for this it did not do.

As said by this Court in *United States v. Bathgate*, 246 U. S. 220, 225:

"Our concern is not with the power of Congress but with the proper interpretation of an action taken by it. This must be ascertained in view of the settled rule that 'there can be no constructive offenses and before a man can be punished his case must be plainly and unmistak-



ably within the statute.' (U. S. v. Lascher, 134 U. S. 624, 628)."

*McCoy v. Pacific Spruce Corpn.*, 1 Fed. (2d) 853.

It should also be noted that certain counts are either repugnant or uncertain in the averments of time. Paragraph II of count 65, which is by reference incorporated in counts 66 to 80 and of count 86, which is incorporated in counts 87 to 100, inclusive, each begin with an averment "That on December 28, 1917, and prior thereto" certain named railroad companies were common carriers operating through routes and that on that date the President assumed control, exercising it through the Director General and "that throughout the aforesaid period of time" the routes were operated for transportation of gasoline for hire, but all the remaining averments of these counts deal with periods of time *subsequent* to December 28, 1917, instead of prior thereto.

### PART III (d).

#### Special Demurrer. (Assignments of Error IV and CXVIII [5].)

The special demurrer points out that counts numbered 36, 37, 38, 39, 40, 81, 82, 83, 84 and 85, are all double.

These counts charge accepting a concession whereby property was transported at less than the lawful rate and whereby a discrimination was practiced.

The statute provides that

"it shall be unlawful for any person \* \* \* to accept \* \* \* any rebate, concession or discrimination in respect of the transportation of any property in interstate or foreign commerce \* \* \* whereby any such property shall, by any device

whatever, be transported at a less rate than that named in the tariffs published and filed \* \* \* or whereby any other advantage is given or discrimination is practiced."

It is quite clear that the acceptance of a rebate or concession whereby property is transported at less than the lawful rate is one offense, and the acceptance thereof whereby an advantage is given and discrimination practiced is another offense.

Indeed, this same act provides, aside from the criminal penalties, forfeitures to the United States of treble the amount of concessions consisting in departures from the rates, which provision does not apply to concessions merely discriminatory.

A discrimination might occur without any departure from the rates. For example, the cases involving extension of unlimited credit to a particular shipper, discriminatory car distribution, occupancy of land belonging to carriers, and many other forms of discrimination not involving departure from the rate.

On the other hand, a departure from the rate may often occur without any discrimination occurring. It is obvious that before there can be discrimination there must be another shipper shipping contemporaneously. Yet the case may readily be where there is no such other shipper, and although there may be a departure from the rate, there is in such case no discrimination.

Here, however, the vice of duplicity is pointedly present, as the indictment not merely in the charging part charges the two offenses, but in the inducement it lays out both the existence of the tariff rates, from which it is alleged the concession was made, and the fact of another shipper shipping coincidentally. So that by every test the two complete crimes are attempted to be charged in these counts.

*United States v. Norton*, 188 Fed. Rep. 256, 259, 261.

*Ammerman v. United States*, 216 Fed. Rep. 326, 329.

*United States v. Morse*, 161 Fed. Rep. 429, 437.

*United States v. Smith*, 152 Fed. Rep. 542, 545, 546.

*United States v. Taylor*, 108 Fed. Rep. 621.

*United States v. Patty*, 2 Fed. Rep. 664.

#### PART IV.

##### Errors Occurring on the Trial.

#### PART IV (a).

Assignments of Error VI (*Rec.*, p. 1543), denial of defendant's motion to instruct a verdict of acquittal upon the admissions of the Government's opening statement (*Bill of Exceptions, Rec.*, pp. 170-175); LXXXII (*Rec.*, pp. 1645, 1646), denial of defendant's motion at the close of the evidence to instruct a verdict of acquittal (*B. of E., Rec.*, pp. 899-901); CXVII (13, 14 & 15) (*Rec.*, pp. 1662, 1663), denial of motion to set aside the verdict (*B. of E., Rec.*, pp. 934-947); CXVII (5) (*Rec.*, p. 1665), denial of motion in arrest of judgment (*B. of E., Rec.*, p. 166).

It is considered the Court erred in denying these motions, because:

(1) It is a scientific fact, of which the court has judicial knowledge, that the liquid condensate of casing-head gas (unblended or blended as shipped to defendant) is not gasoline, but, on the other hand, is appropriately described as unrefined naphtha;

(2) The opening statement of the Government admitted, and the undisputed evidence showed, that the material shipped was not gasoline, as alleged in the indictment, but liquid condensate of casinghead gas, resulting in a fatal variance between the charge and the proof;

(3) The Government's opening statement and the proof showed a controversy as to the proper construction of tariffs, thus ousting the court of jurisdiction, because jurisdiction to construe tariffs is exclusively confided in the Interstate Commerce Commission under the Act to Regulate Commerce and decisions of this Court thereon.

- (1) ***It is a scientific fact, of which the court has judicial knowledge, that the liquid condensate of casinghead gas (unblended or blended as shipped to defendant) is not gasoline, but, on the other hand, is appropriately described as unrefined naphtha.***

Courts take judicial notice of notorious facts concerning commerce, industry, history, natural science and the meaning of words.

4 *Wigmore on Evidence* (2nd ed.), Secs. 2580, 2582.

Instances of this character are "that natural gas no longer exists in quantities sufficient for heating purposes in Indianapolis" (*State v. Indianapolis Gas Co.*, 163 Ind. 48); that Texas cattle fever "is contagious" (*Dorr Cattle Co. v. C. H. W. R. Co.*, 128 Ia. 359); sundry facts about the "burning of wool" (*Sun Ins. Office v. Western W. M. Co.*, 72 Kan. 41); "explosion of oil" (*Waters-Pierce Oil Co. v. Deselms*, 212 U. S. 159); the meaning of "retail liquor dealer" (*State v. Nippert*, 74 Kan. 371); the meaning of "temperance beer" (*State v. Durr*, 69 W. Va. 251); the characteristics of "whiskey, gin, brandy, wine," etc.

4 *Wigmore on Evidence* (2nd ed.), Sec. 2582 and notes.

The meaning of ordinary words is not a matter for testimony, but rather a matter for the court.

3 *Wigmore on Evidence* (2nd ed.), Sec. 1955 a-1.

It would be difficult to conceive of a commodity more common in use or in commerce than is gasoline. There is an abundance of testimony in the record, and it is hardly disputed, that gasoline as commonly understood is a liquid suitable for use by vaporization, such as running a motor car, gasoline launches, stoves, etc. Even the Government's own witness lapsed into the expression "ordinary gasoline" to distinguish it from the wider range of material he attempted to embrace within that term (*Rec.*, p. 447).

Counsel for the Government in his opening statement was impelled to say to the jury:

"Now it will be observed that the indictment charges that what was shipped was gasoline. Now as it is a common knowledge there are two kinds of gasoline, that which is usually refined as crude oil in a refinery, and the other is casinghead gasoline made by the compression of gas escaping from an oil well." (*Rec.*, p. 171).

There is no pretense whatever that the material shipped is this material commonly known as gasoline. What the Government does claim, however, is that what is ordinarily known as gasoline is only one kind of gasoline, that there are other kinds of gasoline, and that this material is one such other kind; and its experts testified substantially to that effect. On the other hand, the defendant's experts all testified that the application of the name "gasoline" to this material is improper; that in no proper sense of the word "gasoline" would it be embraced, and that the name "casinghead gasoline" does not denote a kind of gasoline, but is a compound name, just as are quicksilver, isinglass, applebutter, nearbeer, etc.

We concede that there are various kinds of gasoline, such as motor gasoline, gas machine gasoline, stove gasoline, etc. The fallacy of the Government's

experts' position however is that they attempt to denominate as a kind within the class gasoline, unfinished gasoline material that is in fact not yet gasoline but destined to become one of the kinds of gasoline embraced within the general class gasoline. +

However, all the experts, both the Government's and defendant's, agree that "naphtha" is also a proper name of this material, as well as of the material ordinarily known as gasoline. In fact, Government counsel was ultimately compelled to concede that the material is embraced within the name "naphtha," and one of the Government experts, in an effort to make his testimony consistent, took the position that "gasoline" and "naphtha" were interchangeable names for all the products of the lighter hydrocarbons of petroleum above kerosene, technically known as those embraced within the naphtha fraction (*Rec.*, pp. 865, 866).

Under these circumstances, the question resolves itself not into whether "gasoline" or "naphtha" is the proper name, but rather as to the propriety of the term "unrefined" as a prefix to either name.

If the proposition is sound that it is a matter of judicial knowledge that the material in question is unrefined naphtha, the court is of course not controlled by the evidence, but may readily look to it to refresh its knowledge. The position of the Government's experts was that the material could not properly be denominated "unrefined" because they claim that the material was "refined" in the sense in which they use that word as synonymous with "pure," in that they claim it was free of impurities. On the other hand, they admit that it was not finished (at the time of shipment) to the extent gasoline is customarily finished for ordinary consumption. They further admit that it is frequently a practice to send such material to a refinery for finishing, consisting in the correction of its boiling points, x

generally done by blending (*Rec.*, pp. 833, 834, 840, 853, 854, 884-886).

X The evidence shows beyond controversy that this material was taken to Port Arthur expressly for that purpose, and that every gallon of it was further processed either by blending or distillation. But the Government then shifts to the position that blending is not refining. This then brings the controversy down to the question of the meaning of the words "unrefined" and "refining." If these words are to be construed by their ordinary meaning, it is, as above pointed out, a matter for the court, based on its knowledge of the meaning of words, and not a matter of evidence. If, on the other hand, these words have a special meaning as applied to the petroleum industry, their meaning is properly the subject of evidence. As the District Court declined to take the view that it was a matter of judicial knowledge, the defendant offered evidence by its experts on the meaning of those words as applied to the petroleum industry. The Government failed to qualify any witness as an expert in refining, and consequently the opinions attempted to be expressed by its experts, to the effect that blending is not refining, were not properly admissible. On the other hand, the defendant's experts were qualified on the art of refining, and all of them unhesitatingly said that blending is a very important part of the art of refining; that refining, as applied to the petroleum industry, consists in the separation of the components of crude oil into their various parts, and the production by necessary processes of the finished products thereof. The word "unrefined," in its ordinary sense, denotes a thing that has not been refined, and consequently would undoubtedly embrace this material in that sense. But, in order to meet this meaning of the word, the Government's experts claimed that a process of separation of the



gas from the crude oil had taken place in the earth and that this was a refining process and the only refining process which the material had undergone, and that, in view of its being pure, in the sense of being free of impurities, it needed no further refining. The absurdity of this position is demonstrated by applying this contention to crude oil itself. A crude oil might be absolutely pure, in the sense of being free of impurities, and yet, under their definition of the word "refined," the crude oil would be refined oil. It must be notorious that the principal function of an oil refinery is to convert crude oil into the finished products of it, and the removal of impurities but an incidental process of refining.

It should be observed that the indictment charges that *gasoline* was shipped, and deals with the rates on *gasoline*; but the evidence shows that there also were rates available on unrefined naphtha.

Therefore, if this court judicially knows either (a) that the liquid condensate of casinghead gas is properly embraced within the description "unrefined naphtha," or (b) that it is properly described by both the word "gasoline" and the words "unrefined naphtha," or (c) that it is not the commodity commonly known as gasoline, the case must fall and a verdict should have been ordered for the defendant.

It would seem that as to the last of these propositions, at least, the court must judicially know the fact which is a matter of common knowledge that gasoline as commonly understood is a liquid such as will under ordinary circumstances be suitable for ordinary use in an ordinary motor car or other vaporization use. No pretense was made by the Government to make proof that the material shipped was suitable for other uses than in a motor car, and on this point the evidence overwhelmingly controverts the idea. Leaving aside

all opinions of experts and other witnesses, this fact was proved beyond cavil: that on the tests during the trial conducted jointly by the Government's and defendant's experts it was proven conclusively that under the most favorable circumstances possible the material from the Jenks plant completely failed on both the Packard and Pierce-Arrow cars, and the material from Kiefer completely failed on the Packard car, and there is a conflict of opinion as to how well it worked on the Pierce-Arrow car. Indeed, so adverse did the test develop to the Government's position that it attempted to have stricken from the record all evidence concerning the test after the result was known (Rec., p. 895). Therefore, whether the court knows judicially what the proper name or description of this material is, it is urged that the court at least knows what gasoline is, and the evidence overwhelmingly establishes that this is not the material which the court knows to be gasoline.

**(2) *The opening statement of the Government admitted, and the undisputed evidence showed, that the material shipped was not gasoline, as alleged in the indictment, but liquid condensate of casinghead gas, resulting in a fatal variance between the charge and the proof.***

As previously stated, there has never been any pretense even, on the part of the Government, that the material actually shipped was anything other than the liquid condensate of casinghead gas, commonly called casinghead gasoline. The indictment, however, does not charge the shipment of *casinghead gasoline*, nor aver the rates applicable to casinghead gasoline, but charges the transportation of *gasoline* and avers the rates applicable to it.

The question here considered is not whether unrefined naphtha is or is not a proper name for casinghead

gasoline, but whether casinghead gasoline and gasoline are identical. The very statement of the proposition refutes the possibility of it. "Gasoline" without prefix of any kind is undoubtedly a word in common use, and commonly understood to apply to a commodity commercially dealt in suitable for use such as the operation of motor cars. There is no pretense that casinghead gasoline is this material. The very use of the prefix "casinghead" distinguishes it as something different. It would be utterly immaterial to the question here considered even if the tariffs published a rate (which they did not) on casinghead gasoline which was the same as the rate contemporaneously published on gasoline. It would, nevertheless, be a fatal variance to charge the transportation of gasoline and prove transportation of casinghead gasoline, as a moment's reflection would demonstrate. There are numerous refined products of petroleum which ordinarily take the same rate, as, for example, gasoline, naphtha and kerosene. It is apparent that if it be permissible to charge the defendant with an alleged offense in relation to transportation of gasoline, and prove instead the transportation of casinghead gasoline, it would be entirely possible to charge in another indictment the same transaction as naphtha, and still another the same transaction as kerosene, and simply prove the one transaction concerning casinghead gasoline and attempt to justify the variance on the ground that the rates were the same. It is clear that in such case the defendant might be indicted over and over for one offense under different descriptions and convicted on each indictment by the same evidence.

A variance which would deprive a defendant of the protection of proving a plea in bar by the record is a fatal variance.

The rule as to pleading an indictment, where property is involved in the offense, is that it must be described specifically and by the name usually appropriate to it,

its common acceptation to govern the description with such degree of certainty as will enable the jury to say whether the property is the same as that upon which the indictment is founded.

1 *Wharton's Criminal Procedure* (10th ed.),  
Secs. 254-256.

It is elementary that a description of property in an indictment is material, and that all material averments must be proven as laid.

"It is a positive rule of criminal procedure that the accused shall not be charged with one crime and convicted of another."

6 *Encyclopedia of U. S. Supreme Court Reports*  
(*Michie*), 1909, XVII A.

The rule as stated by Chief Justice MARSHALL in *The Hoppet*, 7 Cranch 389, 394 (11 U. S. 388, 393), is:

"Is it cured by any evidence showing that, in point of fact, the vessel and cargo are liable to forfeiture? The rule that a man shall not be charged with one crime, and convicted of another, may sometimes cover real guilt, but its observance is essential to the preservation of innocence. It is only a modification of this rule, that the accusation on which the prosecution is founded, should state the crime which is to be proved, and state such a crime as will justify the judgment to be pronounced. The reasons for this rule are, 1st, That the party accused may know against what charge to direct his defense. 2nd, That the court may see with judicial eyes that the fact, alleged to have been committed, is an offense against the laws, and may also discern the punishment annexed by law to the specific offense. These reasons apply to prosecutions in courts of admiralty with as much force as to prosecutions in other courts. It is, therefore, a maxim of the civil law, that a

decree must be *secundum allegata* as well as *secundum probata*. It would seem to be a maxim essential to the due administration of justice in all courts."

Instances of variance held fatal in the federal courts are:

In *United States v. Denicke*, 35 Fed. Rep. 407, where the indictment described a letter as being addressed to the treasurer of the Travelers Insurance Company, when the proof showed that it was directed to the Traders Insurance Company.

In *United States v. Rhodés*, 212 Fed. Rep. 513, an indictment for concealing assets in bankruptcy alleged goods, wares and merchandise, number, kind and quality to the grand jurors unknown, and the evidence showed that the character, kind and description of goods at least to a large extent were known to the grand jury.

In *Feener v. United States*, 249 Fed. Rep. 425 (Circuit Court of Appeals for the First Circuit), a similar indictment, where it was held that it was incumbent on the prosecution to show the fact, or a fatal variance would result.

In *Thompson v. United States*, 256 Fed. Rep. 616 (Circuit Court of Appeals for the Second Circuit), it was held that where an indictment alleged larceny of property belonging to the United States it was necessary to prove that the property did so belong to the United States, or a fatal variance would result.

In *United States v. Phelan*, 250 Fed. Rep. 927, the defendant had pleaded to an indictment a former acquittal, which arose by reason of a variance growing out of misdescription of a written instrument. It was of course held that an acquittal by reason of a variance is not a bar to further prosecution for the substantive crime attempted to be, but not accurately, described in the first indictment; the court saying:

“The offense described in the present indictment is not the same as that described in the former one, a copy of which is annexed to the defendant’s plea.” (p. 927.)

It is perfectly obvious in the instant case that if the defendant was again indicted for these same transactions on a charge of receiving concessions on shipments of naphtha, and offered a plea of former jeopardy, the court would have to say, just as it did in the case last above cited, that the offense described in the new indictment is not the same as that described in the former one. The mere similarity of dates of shipment, places, etc., would not be sufficient; for like similar data must necessarily have appeared in the *Phelan* case, the only difference being in the description of the instrument.

**(3) *The Government’s opening statement and the proof show a controversy as to the proper construction of tariffs, thus ousting the court of jurisdiction, because jurisdiction to construe tariffs is exclusively confided to the Interstate Commerce Commission under the Act to Regulate Commerce and decisions of this Court thereon.***

Had the indictment in this case truly pleaded the facts, it would have averred in substance that the material shipped to defendant was liquid condensate of casinghead gas, commonly known as casinghead gasoline (unblended, or blended with naphtha in the proportions of two parts of the casinghead product to one part of the naphtha), that there were no rates published specifically naming this material by those names, but that there were rates published on gasoline; that said rates on gasoline were the proper rates to be applied to the commodity; that the amount of such rates was so much; that there were other lower rates published on unrefined naphtha, but not properly applicable to the commodity;

that nevertheless the commodity was shipped to defendant under the description and upon the rate applicable to unrefined naphtha, and that thereby the defendant procured a concession with respect to the transportation of the commodity. But the Government was very careful, and designedly so, not to plead in the indictment the facts, for the manifest reason that it would be demurrable on its face, under the decision of this Court in the *American Tie & Timber case*, 234 U. S. 138. In that case, the question involved is on all-fours with the question involved here. There had been a rate on cross-ties, which had been cancelled, as a result of which it was contended that, cross-ties being in the nature of lumber, the lumber rates were applicable; and this question was submitted for decision by the courts. The Court, however, pointed out that jurisdiction to construe tariffs was confided exclusively in the Interstate Commerce Commission by the Act to Regulate Commerce, and pointed out the reason why it was essential that such should be the rule, in order to bring about that uniformity of treatment of shippers that it was the fundamental purpose of the Interstate Commerce Act to accomplish, *i. e.*, that if such matters were left to the determination of juries and courts, one jury might find one way, another jury the opposite, a court in one jurisdiction might hold one way and a court in another jurisdiction the opposite, as a consequence of which one shipper would receive one treatment under his decision, and the other a different treatment.

The fact that this prosecution was instigated by the prosecuting arm of the Interstate Commerce Commission should not for a moment be mistaken as implying that it was the construction of the Commission in its judicial capacity that the tariff on gasoline covers this commodity. On the contrary, it simply betokens the unwillingness of the prosecuting branch of the Commission to trust the Commission to decide the matter; but



instead they procure an indictment not disclosing the real controversy, but deliberately designed to conceal it.

This Court has repeatedly upheld the doctrine of the *American Tie & Timber* case since its enunciation, and no case could be imagined wherein the reasoning of that case would make it more applicable than to the instant case.

There are other indictments pending upon this question in the same jurisdiction, and there are civil suits pending in relation to the matter in other jurisdictions. Some of these civil suits are pending in the State of Texas, the laws of which make it a criminal offense to call the material here involved, for the purposes of sale or transportation, by the description gasoline, or gasoline in combination with any other word or words, which would of course embrace casinghead gasoline. It is inconceivable that upon the trial of this same question in those suits in Texas the same result would be reached as was reached upon this indictment. If a question of this kind is open to more than one jurisdiction, the anomaly might readily result that the legal rate applicable to the commodity, under the decisions of the United States District Court for Texas, is unrefined naphtha, while under the decision of the United States District Court for Oklahoma it would be gasoline.

Following is the syllabus of the *American Tie & Timber* case (234 U. S. 138):

"Whether a class tariff includes a particular commodity is a controversy primarily to be determined by the Interstate Commerce Commission in the exercise of its power concerning tariffs and the authority to regulate conferred upon it by the Act to Regulate Commerce.

"The courts may not, as an original question, exert authority over subjects which primarily come within the jurisdiction of the Interstate Commerce Commission.

"Whether cross-ties are or are not lumber and therefore within the tariffs filed for the latter is a question on which there is great diversity of opinion even among the experts upon the subject, and one that should be determined in the first instance by the Interstate Commerce Commission."

In this case, the very question involved is, (a) does the gasoline tariff "include the particular commodity" liquid condensate of casinghead gas, or (b) whether the liquid condensate of casinghead gas "is or is not" gasoline, "and therefore within the tariffs filed, for the latter is a question on which there is great diversity of opinion even among experts on the subject." Six experts of unassailable standing testified positively for the defendant that it is not. Two experts—and it is worthy of note in this connection that the Government did not call the eminent scientists connected with the Bureau of Mines, but hired outside experts—testified that it was. A situation could not come more squarely within the rule laid down by this Court than this does. It would not do to try to answer this proposition by sweeping aside all the testimony of the defendant's experts and say that the question is too plain for argument. That very contention was made in the *American Tie & Timber case*. It was there argued that the rule of primary jurisdiction in one body was well enough abstractly, but that it ought not to prevail when the reason for it no longer existed, and therefore, ought to have no application there,

"because it is so plain that oak cross-ties were included in the lumber rate as fixed in the tariff of the Railway Company that there is no reason for proceeding primarily before the Commission, as there is no possibility of difference on the subject if left to the consideration of the courts. We need not pause to point out the palpable error of law which the proposition involves since on the

face of the record it is apparent that the assumption of fact upon which it rests is absolutely without foundation. We say this because nothing could more clearly demonstrate such result than does the conflict and confusion in the testimony concerning whether cross-ties were included in the filed lumber tariff." (234 U. S. 147.)

And the court goes on to point out a further demonstration arising from the fact that in the trial of the very same case at the first hearing the trial judge was so clearly of opinion that cross-ties were not lumber that he so charged the jury and directed a verdict.

In this case the trial court even conceded that he considered the question not free from doubt, and intimated that if it was a personal indictment he would not be disposed to submit the question to the jury, but that since it was a corporation the question had better be determined higher up (*Rec.*, pp. 899-900). There is of course scant justice in this view, but, to use the expression of this Court in the case above cited, it is "a demonstration" of the fact that there is ambiguity, to put it mildly.

At the conclusion of the evidence the defendant moved a directed verdict, and the following from *pages 899 and 900* of the Record shows the court's impression on the subject:

"By Mr. Diggs: We will also ask that this case be dismissed by the court for the want of jurisdiction arising from the question that it involves a construction of the tariffs as to whether this commodity included within the meaning of gasoline.

"By the Court: Very well. I do not think that question is free from doubt but when (then) I am going to resolve that in favor of the government so that if the jury brings in an adverse verdict you can get a test but I am not sure about that. Those questions were raised in the demurrer and

wherever there is ambiguity and the question is ambiguity, that itself is not enough to preclude it from being a criminal case. I am not sure about that.

"By Mr. Diggs: I just mentioned that at this time so your honor may consider it in connection.

"By the Court: Very well, I do not think the court ought to do that when a man's liberty is stake. I would not do that if it involved a question of imprisonment. I would give my best judgment but these questions have got to be determined.

"The Court: Is there any special thing you want to bring to the attention of the court? I see you have brought some authorities over here.

"Mr. Diggs: I brought some authorities on the assumption the court wanted us to state our position on the question of jurisdiction.

"The Court: That is the same proposition as argued by demurrer?

"Mr. Swacker: No, sir, because the indictments are not so pleaded that we could raise it on demurrer; the railroads did but we could not.

"The Court: Yes.

"Mr. Swacker: And in the way it was pleaded, we could not argue this—

"The Court: You did—they did do it and I did not examine the pleadings, to see whether they should be, but I reached the conclusion the question ought to be definitely passed on by the Supreme Court of the United States, and I overruled the demurrer.

"Mr. Swacker: The way it is pleaded is that we shipped gasoline and the proof is we shipped casinghead gasoline which it is argued takes the gasoline rate. We think the case ought to be dismissed on the ground of variance, because of the variance between the pleadings and the proof, and the only way this jurisdictional question can be saved is by showing by the proof, because we cannot rely on the pleadings to prove it.

"The Court: What does the variance consist in?

"Mr. Swacker: The indictment charges we shipped gasoline. The proof is undisputed we shipped casinghead gasoline from which the government argues and contends that casinghead gasoline takes the gasoline rate, and if it had been pleaded that way it would have been demurrable on its face, under the *Tie & Timber case*, but not having been pleaded that way, the only way this question can be saved is by calling it to your honor's attention now, and asking an instruction on the variance of the testimony. Now, your honor is confronted with the necessity of trying to construe that tariff.

"The Court: Yes—I will not take it away from the jury on that ground. I will give you an exception to that."

Finally the Interstate Commerce Commission's safe transportation rules afford the best demonstration conceivable of ambiguity in the name of the material. It should be noted that these rules are in no sense rules affecting or determining the description to be used for rate or classification purposes, but are rules merely relating to a description required to be used as a matter of safety.

X The rules that were in force during the early part of the period herein involved provided that when the liquid condensate from natural gas or from casinghead gas of petroleum oil wells had a vapor tension exceeding 10 pounds it must be described as liquefied petroleum gas, and shipped in specially constructed tank cars; and that when the condensate, unblended or blended with other products, has a vapor tension not exceeding 10 pounds, and "is shipped as gasoline," it may be shipped in ordinary tank cars; and these rules further provided that the condensate when blended with refinery gasoline or naphtha "may be described and shipped as gasoline" X when the vapor tension does not exceed 10 pounds (*Rec.*, pp. 430-433, 1089, 1090). And during the balance of the

time these rules, while remaining the same as to material over 10 pounds, provided that when under 10 pounds "it must be described and shipped as gasoline, casinghead gasoline or casinghead naphtha" (*Rec.*, p. 1159). After this rule went into force it should be borne in mind that all shipments to defendant, in addition to bearing the description "unrefined naphtha," bore the description "casinghead naphtha," in compliance with this rule, which fact was conceded by the Government.

It should be further noted that in these rules the expression "may be" is used as applied to gasoline, and other similar rules use the expression "must." Furthermore, the word "gasoline" in the "may be" rule is placed in quotation marks by the Commission itself, and the only other instance the safe transportation inspector League was able to find of the use of quotation marks around a name was "strike anywhere" matches. This seems to show rather clearly that the Commission recognized that gasoline was not the true name of the material (*Rec.*, pp. 432-434).

#### PART IV (b).

**The evidence received on the theory of admissions by defendant and the Gypsy Oil Company, consisting in a practice of calling liquid condensate of casinghead gas by the appellation "gasoline" at other times and under other circumstances was improperly admitted, and prejudicial.**

Assignments of Error VII (*Rec.*, p. 1544), Government Exhibit 1 (*Bill of Exceptions*, *Rec.*, pp. 951, 952), showing the fact that the capital stock of both the Gypsy Oil Company and the defendant was owned and controlled by the Gulf Oil Corporation, admitted on the theory of making statements of the Gypsy Oil Company and its employees admissions by the defendant: VIII (*Rec.*, p.

1544), the testimony (*B. of E., Rec., pp. 183-196*), and XIII (*Rec., p. 1552*), Government Exhibit 2 (*B. of E., Rec., p. 953*), and the testimony in relation thereto (*B. of E., Rec., pp. 253, 254*) of J. H. Riedeman, a former employee of the Gypsy Oil Company: XII (*Rec., pp. 1550, 1551*), the testimony of the witness Manson, another former employee of the Gypsy Oil Company (*B. of E., Rec., pp. 251-253*), and Government Exhibits 5, 6, 7, 8 and 9 (*B. of E., Rec., pp. 958-966*), showing in substance that previous to the date, *i. e.*, December 2, 1916, when the unrefined naphtha rates became effective, shipments to defendant were described by the Gypsy Oil Company as "gasoline": IX, X and XI (*Rec., pp. 1546-1550*), the testimony of the witness Sweet, superintendent of the Gypsy Oil Company (*B. of E., Rec., pp. 200-230*) in substance to the effect that previous to the date, *i. e.*, December 2, 1916, northbound rates were made effective on crude unfinished naphtha, the blending material shipped north was described as "naphtha," and thereafter as "crude unfinished naphtha"; his testimony in substance that previous to December 2, 1916, the material shipped to Port Arthur was commonly known as "gasoline" and thereafter as "unrefined naphtha"; and his testimony that the same commodity as was shipped to Port Arthur described as "unrefined naphtha" after December 2, 1916, was also shipped to Pittsburgh, Pa., under the description "gasoline," that description being used because there was no similar unrefined naphtha rate published to Pittsburgh and "gasoline" was therefore the only term of description they could have used upon such shipments: XXXI (*Rec., p. 1591*), the evidence (admitted by defendant, subject to objection) while the witness Sanderson, general superintendent of the gasoline department of the Gypsy Oil Company, was on the stand (*B. of E., Rec., pp. 476-483*), in substance as follows: That previous to December 2, 1916, the material shipped to Port Arthur was described as "gasoline"; that at the incep-



tion of the business the casinghead material was blended with naphtha and shipped to northern points to market and described as "gasoline"; that in the early part of 1915 such shipments were discontinued, and thereafter shipments were made until December 2, 1916, to Port Arthur under the description "gasoline," and after December 2, 1916, under the description "unrefined naphtha," and that before and after December 2, 1916, shipments were made to Pittsburgh described as "gasoline," the degree of blend of the material shipped to northern points to market in 1913 and 1914 not however being shown: XXXII (*Rec.*, pp. 1595, 1596), the evidence (admitted by defendant, subject to objection) of the witness Hoagland (*B. of E., Rec.*, pp. 487, 488) that the material shipped to Pittsburgh was identical with that shipped to Port Arthur taken from the same tank at the same time: XLIV and XLV (*Rec.*, pp. 1600, 1601), the testimony of the witness Millard (*B. of E., Rec.*, pp. 547-558), a former employee of the Gypsy Oil Company, to the effect that the material shipped previous to December 2, 1916, was billed as "gasoline" and thereafter as "unrefined naphtha," and that the shipments in the earlier years direct to market were also billed as "gasoline," but that this product was different from that shipped to Port Arthur in that it was further blended, more naphtha being used in order to bring it to the gravity specifications ordered: XLIII (*Rec.*, p. 1600), Government Exhibit 95 (*B. of E., Rec.*, pp. 1375, 1376), and the testimony of the witness Lyon (*B. of E., Rec.*, pp. 542-547) showing that the shipments forwarded in 1913 and 1914 direct to market were invoiced and described as "blended gasoline": XIV (*Rec.*, p. 1553), the testimony of the witness Weddell (*B. of E., Rec.*, pp. 276-283), agent of the delivery carrier, to the effect that he collected charges from defendant previous to December 2, 1916, on shipments billed as "gasoline" at the gasoline rates: XV (*Rec.*, pp. 1553-1557), testimony of the witness Timmons (*B. of E., Rec.*, pp.

290-323) concerning entries reading "gasoline" made in a book not offered in evidence nor made by the witness, but made by laboratory test boys, whose functions did not include classifying or naming material, but merely consisted in recording the data of physical characteristics developed by tests, and who were not shown to have any duties in anywise relating to shipping: XLII (*Rec.*, p. 1600), testimony of same witness (*B. of E.*, pp. 290-323, 541, 542) and Government Exhibit 94 (*B. of E.*, *Rec.*, p. 1369), XLVIII (*Rec.*, p. 1601), Government Exhibits 110 to 119, inclusive (*B. of E.*, *Rec.*, pp. 1444-1453), LII and LIII (*Rec.*, p. 1602), Government Exhibits 120 to 134, inclusive, and 10 to 14, inclusive, said exhibits being records showing the numbers of the tanks at refinery into which shipments were unloaded, pumping records showing movement of materials between tanks and distillation test records by which it was sought to be established the material was gasoline, or was so called because other distillation tests of the same numbered tanks were entered "gasoline," whereas the testimony showed the fact to be that the tanks in question were used for making gasoline and that the practice was to unload the material shipped into said tanks and there blend it with other material to make gasoline: XXXIII and XXXIV (*Rec.*, pp. 1596-1598), being the testimony of the witness Koontz (*B. of E.*, *Rec.*, pp. 489-496), a laboratory tester, in substance that he made entries on distillation test sheets in which he characterized the contents of certain tanks as gasoline, whereas it was shown that it was no part of his duty to classify the material but merely to record the indicia of the physical tests; also that instructions were issued about the time the practice of using the description "unrefined naphtha" in shipping arose, to refinery employees to use that description thereafter instead of the description "Kiefer gasoline" theretofore used by them: XXXVIII, XXXIX, XL, XLI (*Rec.*, pp. 1599, 1600). Government Exhibits 85 to 93, inclusive (*B. of E.*, *Rec.*,

pp. 1363-1368), being communications between defendant's traffic manager Ellis and officials of the carriers, as follows: January 15, 1914, Ellis to Mr. Powers of Frisco railroad, requesting reduction of gasoline rate from Kiefer to Port Arthur; letter May 29, 1916, from Frisco railroad to Ellis, inquiring if any objection by defendant to cancellation of gasoline rates Oklahoma to Port Arthur; June 5, 1916, reply of Ellis stating does not wish rate cancelled, as it is in daily use; February 9, 1915, Ellis to Frisco railroad and Southern Pacific, requesting further reduction of gasoline and naphtha rates between Kiefer and Port Arthur; March 18, 1915, reply to above declining to make further reduction; January 18, 1914, telegram Ellis to Kansas City Southern railway requesting establishment rate on gasoline for coastwise shipment; January 19, 1914, telegram Ellis to Kansas City Southern railway requesting establishment northbound rate on naphtha; January 19, 1914, letter Ellis to Frisco railroad and Kansas City Southern railway confirming request and explaining that naphtha was being moved northbound to be further refined with products then at Kiefer, and that the outbound shipments from Kiefer would consist of gasoline, of which there would be two cars out for each one of naphtha in; January 19, 1915, letter from Southern Pacific railroad and Frisco railroad to Ellis replying to latter's request for establishment of a 15c rate as a transit proposition, declining to do so on the ground that the material having passed beyond a crude state it would result in disturbing the rate basis applicable to refined oils: XLIX (*Rec.*, p. 1601) and LI (*Rec.*, p. 1602), being Government Exhibits 68 and 69 (*B. of E., Rec.*, p. 1290) and 135 to 138, inclusive (*B. of E., Rec.*, pp. 1458-1461), being communications from defendant's traffic manager, Ellis, to W. P. Donovan, superintendent of Gypsy Oil Company, instructing latter over what routes to forward shipments to Port Arthur, and advising him concerning certain safety regulations; this

evidence having been admitted on the theory that it indicated exercise of control over Gypsy Oil Company by defendant: and LXXXI (*Rec.*, pp. 1640-1645), denial of motion to strike out all of the foregoing testimony and evidence (*B. of E.*, *Rec.*, pp. 625-630, 897).

The theory upon which all this evidence was admitted was that the practice of calling and shipping the material as gasoline (previous to the publication of the rates on unrefined naphtha) by agents and employees of the company, constituted an admission that the material was in fact gasoline. As it so happened, however, that the great bulk of this evidence consisted in declarations by representatives of the Gypsy Oil Company, it was thought to impute their acts to the defendant by showing that the Gypsy Oil Company was controlled by the same corporation that controlled the defendant. It is rather a novelty to constitute a criminal agency solely by reason of intercorporate relationship, and the trial court was rather loath to embrace this doctrine, and admitted the earlier evidence rather on the theory of showing the general course of conduct of the Gypsy Oil Company (the relevancy of which is not apparent). But the Government finally rested its claim to impute to the defendant the acts of the Gypsy Oil Company on the letters (*Exhibits 68, 69, 135-138*) from the traffic manager of the defendant to the superintendent of the Gypsy Oil Company directing the latter over what route to forward shipments and calling his attention to certain safety regulations; contending that they established the exercise of control by the defendant over the Gypsy Oil Company.

There is, of course, absolutely no warrant for any such assumption as any purchaser of material might and would very properly write the seller giving him directions as to the route of shipment desired and calling his attention to regulations involved. This, however, is not the important point. The real point is that the admission of this evidence, as admissions, violates the most

elementary factors of the *res inter alios acta* rule. Some of the evidence in question, such as that of the witness Millard (*Rec.*, pp. 547, 548), shows that it embraces a different material than that shipped to Port Arthur, namely, the blended gasoline, which was and ought in fact to have been shipped as gasoline. The distillation tests, pump records and unloading records by which the Government sought to make it appear that because tests on certain days of certain numbered tanks bore the description "gasoline," and the unloading records of that day showed certain cars of the casinghead material had been pumped into those tanks, that the casinghead material had been denominated gasoline, whereas the testimony showed that the fact was that the tanks were used to make gasoline and that the casinghead material was put into those tanks in the course of such manufacture, so that the test reading "gasoline" was the finished product resulting from the blending.

Declarations or acts concerning other transactions than those involved, even though by the same party, in order to be receivable as admissions, or indeed to have any evidentiary value, must be declarations or acts done under similar circumstances in all material respects.

Such facts being of course purely collateral, are ordinarily inadmissible because entirely irrelevant. When, however, they tend to show a course of conduct or habit, they may become relevant. In such case, however, it must be a course of conduct or habit in similar situations. Obviously, the shipment of blended gasoline (as that expression has been used in this case) as gasoline affords not the slightest inference of the existence of a habit of shipping something else as gasoline. Again, the shipment of a certain material as gasoline under a classification permitting such description or offering no other choice, has not the slightest probative force to establish that the identical material shipped under an-

other classification permitting of a choice or authorizing the use of a more appropriate designation, is gasoline. It should be understood that the defendant has at no time disputed, but on the contrary freely admitted (subject to exception) throughout the trial, that it had been its practice to ship the identical material and describe it as gasoline *under different circumstances*.

Before the establishment of the unrefined naphtha rates to Port Arthur, and at all times as to Pittsburgh, there were no unrefined naphtha rates or classifications. If, however, the classifications that did exist would permit of the shipment of this particular material under the description of gasoline, *even though it was not in fact the material commonly known as gasoline*, then it is perfectly obvious that the fact of so shipping it could not have the slightest probative force to establish that the material was in fact gasoline. The attitude of the trial court upon the objection to the admission of this class of evidence was that if such was the situation it would be a matter for the defendant to explain, and explanation to the above effect by the defendant would tend to affect the probative value of the evidence offered by the Government. It will readily appear where this rule would lead to, quite apart from shifting the burden of proof to the defendant. It would result in going into the trial of a collateral subject, namely, what during other times than those involved in the indictment, as to Port Arthur, and what as to other places not involved in the indictment, as to Pittsburgh, did the classifications permit with respect to the shipment of this material as gasoline? Upon the trial of such issue, and with the burden improperly upon the defendant, it would be found, for example, that although this material was not the material commonly known as gasoline, yet, by reason of the peculiarity of the classifications naming rates on gasoline it could properly be shipped under that description. The situation would then be that it would be established that

the evidence originally offered of such previous shipment under such other circumstances had no probative force whatever, and it would be necessary that it be stricken out. The mere statement of such procedure shows the impropriety of the practice of admitting the evidence at all in the first instance without the contemporaneous establishment of the fact by the Government that the circumstances were identical (in material respects).

To correctly appraise this evidence it is useful again to consider its character. To be supposed to be relevant at all, it must be assumed to tend to prove that the material shipped to Port Arthur under the description "unrefined naphtha" was in fact gasoline. Obviously, it is not supposed to be direct proof. The idea is that because at other times similar material was described for shipment as gasoline, the inference is that it was gasoline. This on the fact of it is of course a violent disregard of the hearsay rule, because purely extrajudicial, not subject to cross examination, etc. But this defect of it might be curable by an exception to the hearsay rule, if the evidence was of a character relevant to establish an admission, the theory being that if the defendant so characterized the material as gasoline, inferentially it was gasoline, and piling inference on inference that therefore the material shipped to Port Arthur was inferentially gasoline. But the fatal trouble with it is that it starts off with the presumption that the evidence offered is *relevant* towards proving that there was any admission that the material was gasoline.

Professor Wigmore, examining evidence of this character, says:

"Sec. 32. *Same: With Reference to the Proponent of Evidence.*—\* \* \* Thus, throughout the whole realm of evidence, circumstantial and testimonial, the theory of the inductive argument, as practically applied from the standpoint of ad-



missibility, is that the evidentiary fact will be considered when, and only when, the desired conclusion based upon it is a more probable or natural, or at least a probable or natural, hypothesis, and when the other hypotheses or explanations of the fact, if any, are either less probable or natural, or at least not exceedingly more probable or natural. The degree of strength required will vary with different sorts of evidentiary facts, depending somewhat upon differing views of human experience with those facts, somewhat upon the practical availability of stronger facts, and somewhat upon the hardships of certain inferences in case they should be unfounded. But the general spirit and mode of reasoning of the courts substantially illustrates the dictates of scientific logic.

"Sec. 33. *Same: Occasional Subordinate Tests; Method of Agreement and Method of Difference.*—The main question for the inductive argument being (in the words of Professor Sidgwick, already quoted), 'What certainty can we obtain that the alternative chosen is the right one out of all those conceivable?' there have been stated by scientific logic several subordinate methods or processes of investigation which may be viewed as attempts to answer this question. Usually enumerated as five, they are reducible in essence to two—the Method of Agreement and the Method of Difference. Occasionally they may be and are conveniently resorted to in the testing of judicial evidence.

"(a) *Method of Agreement.*—The canon to which this applies may be thus stated: 'Whatever circumstances can be excluded without excluding the phenomenon whose effect (or cause) is being sought; or can be absent notwithstanding its presence, are not causally connected with it. \* \* \* The remainder, those circumstances which are not eliminated by this process, are supposed to be thus shown to be essential to the phenomenon—to be the proved effect (or cause).' From the point of view of proof, then, when we argue that

the observed instances of *a*, viz., *a'*, *a''*, *a'''*, being always followed by *b*, proves *a* to be the cause of *b*, we can avoid the danger of ignoring other causes as the true explanation, by providing that the various instances shall be attended by identically the same circumstances or conditions; then, and then only, when *a*, under identically the same conditions, is followed always by *b*, have we the right to claim that *b* is the effect of *a* and not of some other cause. Applying this method from the standpoint of mere admissibility, we of course do not need to exclude so rigorously the possibility of other explanations; accordingly our test would be whether the evidential instances occurred under substantially similar (not identically the same) conditions, i. e., so that the supposed conclusion is at least the more probable, though not the only possible, explanation. This subordinate test— which is merely a practical aid to the ultimate or fundamental one—will naturally be most available and useful where the evidential fact consists of a supposed parallel instance. To illustrate: (1) In showing that a person's illness was due to the eating of certain food, the fact is offered that other persons were ill after eating of the same food. Here the test naturally to be applied is whether the other illnesses occurred under substantially similar conditions of time, surroundings, and symptoms. (2) To show that a portion of a pavement caused an injury because dangerous to passers-by, the fact is offered that other persons who passed fell down at that place. Here a similar test is called for. Judicial annals contain a vast variety of instances in which this same subordinate test is the natural one to be applied, and is in practice used by the courts.

“(b) *Method of Difference*.—The canon of this method is: ‘If an instance in which the phenomenon under investigation occurs, and an instance in which it does not occur have every circumstance in common save one, that one only occurring in the former; the circumstance in which alone the two

instances differ is the effect, or the cause, or an indispensable part of the cause, of the phenomenon.' As applied to the judicial purposes of admissibility, the test of this argument becomes: In order to prove that  $x$  is the cause of  $b$ , by the fact that whenever  $x$  was present the effect  $b$ ,  $b'$ ,  $b''$ , was found, and that wherever  $x$  was not present the different effects  $c$  or  $d$  were found, the various instances  $b$ ,  $b'$ ,  $b''$ ,  $c$  and  $d$  are admissible if they were substantially similar to each other in all respects except the presence of  $x$ .

"This test is of comparatively rare employment in judicial evidence, because it is rare that instances occur which fulfill this requirement, unless where pre-arranged experiments are possible. But so far as the conditions of the case admit the fulfillment of the requirement, the argument may be and is employed. To illustrate: The injury to the paint on the plaintiff's house is attributed by the defendant to sewer-gas; for this purpose, he is allowed to use the fact that 'under conditions and circumstances as nearly as possible like those surrounding the plaintiff's house,' except the presence of the sewer-gas, the injury to paint did not occur.

"The purpose in using both these subordinate tests is always the same general one—to secure a fair probability for the claimed hypothesis, as against and in competition with other possible ones. It is enough to note here that these specific and accepted logical tests are occasionally available and are judicially applied in the admission of litigious evidence."

*1 Wigmore on Evidence (2nd ed.), Secs. 32, 33.*

"Sec. 442. *Principle of Probative Value (Relevancy)*—The requirements for this process of inference are indicated by the logical principles already examined at the outset (*ante*, Secs. 30-36), and a brief re-statement will be sufficient. There is presented, as the *factum probandum*, a capacity or tendency in  $X$  to produce the specific effect  $B$ . This means that in the presence of a certain complex of circumstances the introduction of  $X$  will result in the occurrence of  $B$ ; *i. e.*, this alleged

tendency or capacity in X is not an abstract and absolute one, but a limited and specific one, namely, a capacity, under the circumstances in which B occurred, to be followed by B. What X's capacity or tendency under other circumstances might be, is immaterial; the single question is whether there was such a capacity or tendency under the circumstances in hand. In looking elsewhere, therefore, to evidence this specific capacity or tendency by observing the same effect elsewhere, the requirement is that the circumstances elsewhere are the same as in the case in hand. Thus, if elsewhere are found similar results, B' and B'', accompanying X, it cannot be inferred that they are the result of the alleged tendency of X, unless the other circumstances in those cases were similar to that in issue; because otherwise it cannot be known that some other circumstance, Y or Z, was not the cause of B' or B''. In other words, unless the circumstances are the same, the door is open for other hypotheses that might account for the effects B' and B'', as well as for B. Thus, if the proposition is that X factory's vibrations have a tendency to injure an adjacent building B, the falling of timbers in other adjacent houses B' and B'' might not evidence such a tendency if B' were an old house and B'' were a wooden house, while B was a new brick house; the case B' would at most indicate a tendency in X to injure an old house, not a new house B; and the case B'' would at most indicate a tendency in X to injure a wooden house, not a brick house B. Or, again, if in a third house B''', lying on the other side of X factory and next to Y factory also, there is a similar injury, it cannot be inferred that it is the result of a tendency in X to produce such an injury to B, because the factory Y may have caused, partly or solely, the injury to B'''. The general logical requirement is, then, that when a thing's capacity or tendency to produce an effect of a given sort is to be evidenced by instances of the same effect found attending the same thing elsewhere, these other instances have probative value—*i. e.*, are relevant—to show such

a tendency or capacity *only if the conditions or circumstances in the other instances are similar to those in the case in hand.*

"But this similarity need not be precise in every detail. It need include only those circumstances or conditions which might conceivably have some influence in affecting the result in question. For instance, in the case put above, the circumstance that house B' was of wood while house B was of brick would conceivably affect the ease and likelihood of injury by vibration; but the circumstance that the inner walls in B' were papered while those in B were kalsomined, or that the house B' was painted red while the house B was painted green, or that the occupant of house B' was a Presbyterian while the house B was occupied by a Methodist—such a circumstance, though perhaps material in other aspects, could not have any bearing upon the likelihood of injury by vibration. A similarity between the two cases in respect to such circumstances, therefore, would not be required. The similarity that is required is, in short, a similarity in essential circumstances, or, as it is usually expressed, a *substantial similarity*, i. e., a similarity in *such circumstances or conditions as might supposably affect the result in question.*

"The logical foundation of this principle has been already set forth in another place (Secs. 30-33). As applied to the present sort of inference it has constantly received the sanction of the courts; and whatever are the inconsistencies of its applications, there is substantial unanimity in the general reasoning:" (Italics his).

*Ibid*, Sec. 442.

Citing:

*Lake Erie & W. R. Co. v. Mugg*, 132 Ind. 168;  
*Chicago, St. L. & P. R. Co. v. Champion*, 32 N. E.  
 Rep. 874;  
*Emerson v. Lowell Gaslight Co.*, 3 Allen 410,  
 417;

*Hunt v. Lowell Gaslight Co.*, 8 Allen 169, 171;  
*Baxter v. Doe*, 142 Mass. 558, 561;  
*Reeve v. Dennett*, 145 Mass. 23;  
*State v. Justus*, 11 Oregon 178;  
*Leonard v. Southern Pacific Co.*, 21 Oregon. 555,  
 559.

In *Cohn v. Saidel*, 71 N. H. 558, 53 Atl. 800, the court was concerned with a situation in many respects similar to the evidence here involved. The case was one for malicious prosecution, and the plaintiff sought to show that the defendant had previously instituted another action, which he had after the lapse of time permitted to be nonsuited. The plaintiff's theory was that permitting himself to be nonsuited amounted to an admission by the defendant that he never had a legitimate cause of action. As the court, upon careful consideration of the whole subject of inferences, pointed out, a reasonable inference might be drawn that such was the case and another inference just as reasonable drawn to the contrary, and that consequently the evidence could have no probative force whatever, but would merely lead to collateral inquiries.

In *United State Fidelity & Guaranty Co. v. Des Moines National Bank*, 145 Fed. Rep. 273, the court was confronted with substantially the same question, and said:

"Thus the charge proceeded, upon the view that, while the matter of when and how the loss occurred and what became of the money was not shown but left to conjecture, Kelley's relation to the money, his control over it, and his custody of it, were such that the jury would be justified in inferring that the loss, because not shown to be otherwise, was in some way or other the result of culpable negligence on his part. Essentially the same idea is expressed by counsel for the bank, when they say:

'We contend that by the manner of procedure in this bank, and the system of accounting in

vogue in this bank, we have shown conclusively that Kelley got the money and can't tell what became of it, and so his bond is liable unless they show what became of it.'

"We cannot concur in that view. It presupposes that the reserve cash was within the control and custody of Kelley, and applies to him the rule applicable to a bailee or other custodian whose situation is such that a loss, if not otherwise explained, warrants the inference that it was due to his negligence or dishonesty. Kelley occupied no such relation to this money. He could take from it to replenish the counter cash and add to it from the latter, and it was his duty to count it at the close of business each day, and then to lock the safe; but, in other respects, it was not within his control or custody. It was the cashier, and not Kelley, who carried the combination to the lock, who could say whether the reserve chest should be kept locked or unlocked during business hours, and who could otherwise take measures for the safety of the money. When Kelley was attending to his important duties in the paying teller's cage, as was required most of the time, the reserve chest and its contents were beyond the range of his observation, the chest was unlocked, and its contents were easily accessible to other employes, over whom he had no control, and who were passing in and out of the vault, and sometimes out of the bank, without any immediate supervision of their movements. True they had no right to disturb the money, but that was not an assurance that none of them would yield to the temptation which the situation presented; nor does the presumption of innocence, which would protect them from the charge of theft in the absence of satisfactory evidence thereof, warrant the inference that Kelley was either negligent or dishonest. *Smith v. First National Bank*, 99 Mass. 605, 97 Am. Dec. 59. Such an inference cannot be legitimately drawn from a rebuttable presumption, but only from premises which are certain.



*United States v. Ross*, 92 U. S. 281, 23 L. ed. 707; *Manning v. Insurance Co.*, 100 U. S. 693, 25 L. ed. 761; *Looney v. Metropolitan R. R. Co.*, (U. S.) 26 Sup. Ct. 303, 50 L. ed. . . . ; *Globe Accident Ins. Co. v. Gerisch*, 163 Ill. 625, 45 N. E. 563, 54 Am. St. Rep. 486; *Chicago etc. Ry. Co. v. Rhoades*, 64 Kan. 553, 68 Pac. 58.

"Passing, for the moment, the fact that Kelley neglected to make a daily count of the money in the reserve chest, it is plain that the evidence bearing upon the cause or occasion of the loss was altogether circumstantial, and was as consistent with the theory that the loss was occasioned solely by the personal dishonesty of one of the other employes, to whom the money in its exposed condition was easily accessible, as with the theory that it was occasioned by the personal dishonesty or culpable negligence of Kelley. Which theory was correct was left to mere conjecture. The bank had the burden of proof, and, as it failed to produce any evidence reasonably tending to establish the latter theory to the exclusion of the other, the guaranty company was entitled to a directed verdict in its favor. *Asbach v. Chicago etc. Ry. Co.*, 74 Iowa 248, 37 N. W. 182; *Smith v. First National Bank*, 99 Mass. 605, 97 Am. Dec. 59; *Crafts v. Boston*, 109 Mass. 519; *Morley v. Eastern Express Co.*, 116 Mass. 97; *Searles v. Manhattan Ry. Co.*, 101 N. Y. 661, 5 N. E. 66; *Ruppert v. Brooklyn Heights R. R. Co.*, 154 N. Y. 90, 47 N. E. 971; *Chicago etc. Ry. Co. v. Rhoades*, 64 Kan. 553, 68 Pac. 58. As was well said by the Supreme Court of Iowa in *Asbach v. Chicago etc. Ry. Co.*:

'A theory cannot be said to be established by circumstantial evidence, even in a civil action, unless the facts relied upon are of such a nature, and are so related to each other, that it is the only conclusion that can fairly or reasonably be drawn from them. It is not sufficient that they be consistent, merely, with that theory, for that may be true, and yet they may have no tendency to prove the theory.'

“The case of *Smith v. First National Bank* is well in point. It was an action to recover the value of bonds deposited with the bank for safe-keeping and alleged to have been lost through its negligence. There was no evidence of negligence, except that which resulted by inference from the fact of loss, and the surrounding circumstances were such as to leave it equally open to inference that the bonds had been stolen by one of several persons who had access to the vault in which the bonds were kept. For a loss in the latter mode the bank was not responsible. The court, after observing that the plaintiff had the burden of proof, and that its evidence failed to exclude the possibility of loss by other means than negligence of the defendant, and left the case to be decided by mere inference, without any facts to determine which inference was correct, said:

‘There being several inferences deducible from the facts, the plaintiff had not maintained the proposition upon which alone he would be entitled to recover. There is strictly no evidence to warrant a jury in finding that the loss was occasioned by negligence and not by theft. When the evidence tends equally to sustain either of two inconsistent propositions, neither of them can be said to have been established by legitimate proof. A verdict in favor of the party bound to maintain one of those propositions against the other is essentially wrong.’ ”  
(pp. 278-280.)

See, also:

*Bird v. United States*, 180 U. S. 356, 359;  
*Barney v. Rickard*, 157 U. S. 352, 367;  
*Thompson v. Bowie*, 4 Wall. 463, 471;  
*United States v. Ross*, 92 U. S. 281;  
*Hall v. United States*, 150 U. S. 76, 81;  
*United States v. Baxter*, 46 Fed. Rep. 350.

The admission of such evidence could not but seriously prejudice the defendant, and when, as here, it was allowed to be piled up cumulatively by witness after witness, it was bound to exert an extremely prejudicial effect.

#### PART IV (c).

**The evidence as to the practice of certain other concerns unconnected with defendant, of calling or describing as "gasoline" material shipped or produced by them, said material in some instances shown to have been different from, and in other instances not shown to be of the same character as, that shipped to defendant, and the material circumstances surrounding such description being expressly shown in some cases to have been different from, and in no case shown to be the same as, those surrounding the shipments to defendant, was inadmissible for the purpose for which admitted, i. e., of proving the proper name of the commodity shipped to defendant; and it was not competent to establish a custom by showing individual instances.**

This evidence is the subject of the following assignments of error: XVIII (*Rec.*, pp. 1569-1577) testimony of the witness Haigh (*Bill of Exceptions, Rec.*, pp. 394-408), Superintendent of the Ajax Gasoline plant, that he considered and shipped the material produced by his plant as "gasoline," it in fact being blended down to a gravity of 56 to 58 degrees, the proportions being one of the casinghead to three of naptha (just the opposite of the Gypsy Company blend), and the product a finished gasoline shipped direct to market: XIX, XX, XXI, XXII, XXIII, XXIV, XXV, XXVI (*Rec.*, pp. 1577-1587), testimony of the witness League, a carrier Bureau of Explosives Inspector (*B. of E., Rec.*, pp. 408-456), in substance, that the material shipped by the Gypsy Oil Company was the same both before and after December 2, 1916, and was called by the superintendent of the Gypsy Com-

pany "casinghead gasoline" (*Rec.*, pp. 408-418), the witness not being shown to be qualified to know whether the material was the same; that Chestnut & Smith (unconnected with defendant) manufactured a blend of raw casinghead and naphtha which they described and shipped as "gasoline" (*Rec.*, pp. 421-424); that D. W. Franchot (also unconnected with defendant) did likewise (*Rec.*, pp. 425-426); that the Totem Gasoline Co., Oil States, Ajax, Tribes, Eagle, Consumers, Victor, Tidal, Ohio Cities and Gilliland Gasoline Companies (all unconnected with defendant) did likewise (*Rec.*, pp. 426-428), although he could not say the degree of blending or proportions in any instance, but knew there was very wide diversity in that respect, the proportions of blending material involved running all the way from 25% to 95%, and some of it being shipped direct to market for consumption, although the raw casinghead was generally shipped to refiners to be blended; that although the safety rules and tariffs required raw casinghead of over 10 pounds vapor tension to be called "liquefied petroleum gas," no distinction was made by these people (other than in shipping), it being commonly called "gasoline" by them, although "liquefied petroleum gas" is a most accurate name; and when these people attempt to speak accurately about a blended product they do not call it just "gasoline," but use some prefix such as "naphtha blend," "kerosene blend," "blended gasoline," etc.; that he has tested "ordinary gasoline," such as is commonly sold for consumption, and found its vapor tension to range from 1 to 7 pounds (the latter being quite unusual) (*Rec.*, pp. 441-448), whereas material shipped by the Gypsy Company had a vapor tension of 6 to 10 pounds (*Rec.*, pp. 415, 450-454), and in all of the cases testified to by him it was not shown that there were any rates in effect on unrefined naphtha, making possible the use of that description or any description but "gasoline" (*Rec.*, pp.

448-450); and his testimony that in calling the unblended casinghead "raw casinghead" he did not mean to intimate that it was in a crude or unrefined state (*Rec.*, p. 451), his previous testimony having been as to the use of the term by others engaged in the business (*Rec.*, p. 435), not by himself, and he not being qualified to express an opinion (*Rec.*, p. 453): XXVII (*Rec.*, pp. 1587, 1588), the testimony of the witness Scott (*B. of E.*, *Rec.*, pp. 456-461), another safety inspector, in substance, that at several plants he had inspected it was the custom to call blended material produced by them "gasoline," some blends being kerosene and others naphtha blends; there being no showing whatever of similarity of these blends to the Gypsy Company's blend, and it being further shown that his contact with such parties was limited to their shipping relations, and there being no showing that there were "unrefined naphtha" rates available, or any other than "gasoline" rates: XXVIII (*Rec.*, p. 1588), testimony of witness Barnhardt (*B. of E.*, *Rec.*, pp. 461-465) that D. W. Franchot, with whom he was connected, was accustomed to ship his product as "gasoline"; it not being shown to be identical with that shipped by the Gypsy Company, and there being no showing of any choice of rate descriptions being available: L (*Rec.*, p. 1602), the testimony of the witness Freeman (*B. of E.*, *Rec.*, pp. 615-618) of the Carter Oil Co., that tops shipped by it from Carterco, Okla., to Baton Rouge, La., under the description "crude unfinished naphtha," were produced by a skimming plant, whereas his testimony showed that this description was not limited to products of skimming plants; and LXXXI (*Rec.*, pp. 1640-1645), denial of motion to strike out all of the foregoing evidence (*B. of E.*, *Rec.*, pp. 625-630, 897).

The admission of this evidence constituted an even more violent disregard of the fundamental principles of the rule under which evidence of *res inter alios acta* may

be admitted, for the reason that this evidence related not to defendant's course of conduct at other times and under other circumstances, but to the conduct of *third persons* at other times and under vitally different material circumstances in many respects. Generally speaking, the acts and declarations of strangers to the transactions under inquiry are not admissible at all, *first* because they are pure hearsay, and *second*, because they are even more remotely collateral than those of the defendant. They, of course, could not bind the defendant as admissions, and the only probative force they could have would be to attempt to establish a fact by showing a general custom. An exception therefore is made to the rule against the admission of declarations or acts of third persons, to the extent that where the material circumstances involved are substantially similar they might have a tendency to establish the existence of a certain state of affairs. In this case, however, the evidence was offered on the theory of establishing a custom in the business of calling the material in question gasoline. It is not competent, however, to attempt to establish a general custom by showing individual instances. As was pointed out on the trial, the Government might call twenty witnesses to prove that they individually called the material gasoline; the defendant might in turn call fifty witnesses to prove that they individually did not, and the trial drag on to the end of the court's patience as to numbers of witnesses without having established anything warranting a reasonable inference. If, for example, there were 1,000 people engaged in the industry, and the Government called 20 witnesses, as above suggested, the defendant 50, and the Government 30 more on rebuttal, there would be the evidence of but ten per cent of the industry, and that equally divided, and no basis whatever laid for any conclusion as to what the general custom was.

Wholly apart from this objection, a mere review of the evidence shows that as to none of it was identity of material circumstances established, but as to much of it cross-examination, and in some instances the direct examination, established that the material circumstances were in fact vitally different. Take, for example, the testimony of the witness Haigh, to the effect that the material produced and shipped by his plant was shipped as gasoline. The evidence shows that it was an entirely different material from that shipped to defendant, that it had been blended down to a gravity of 56 to 58 degrees by using three parts of naphtha to one of casinghead material—just the opposite to that shipped to defendant—and which made the material one substantially similar to that originally produced by defendant called blended gasoline, and which it is conceded ought to have been shipped and classified as gasoline. His testimony further shows that it was a finished gasoline and was shipped direct to market. Such evidence, therefore, could not have the slightest tendency to establish either that the material shipped to defendant was gasoline or that there was any custom so to consider it.

As to the witness League's testimony, to the effect that a number of plants named by him were accustomed to shipping their product as gasoline, it showed that he could not state the degree of blending or the proportions in any instance, but knew there was a wide diversity in that respect, the proportions of blending material involved running all the way from 25% to 95%, and some of it being shipped direct to market for consumption. It is clear that among the materials embraced in his testimony there was undoubtedly much that ought to have been considered gasoline; and his testimony further discloses that the material shipped by the Gypsy Oil Company had a vapor tension of 6 to 10 pounds, whereas "ordinary gasoline" (his expression) has a vapor ten-



sion ranging from 1 to 7 pounds, the latter however being quite unusual.

The same is true of the testimony of the witnesses Scott and Barnhardt; and in all the cases covered by these exceptions there was no showing in any instance of the existence of any unrefined naptha rates which might have been used.

On apparently the same theory the witness Freeman was permitted to testify that the material shipped by his company as crude unfinished naptha was the product of a skimming plant, supposedly to establish that that name was applicable only to the product of a skimming plant. Yet his cross examination showed that the name was not so limited, but that the operation of a skimming plant was but one method of producing the material which might properly be designated by the name "unfinished naptha."

The only respect in which this testimony showed any similarity of circumstances (in connection with the business of these third parties to that of the defendant) was that the material was produced in each case by a casing-head plant. As was shown, however, by the testimony of several witnesses—and it is a fact as to which there is no possibility of dispute—casinghead product may enter into finished gasoline to the extent of anywhere from 5% to 30%. Under these circumstances, it would have been just as reasonable to have admitted evidence of the shipment of ordinary finished commercial gasoline under the name of gasoline, by any third party, anywhere in the United States, as evidence of the existence of a custom of calling casinghead product gasoline. And it must be remembered that the only theory of establishing such an alleged custom was that if there was such a custom it indicated that the material was gasoline. Of course, if the material were in fact not gasoline, it would be utterly irrelevant that there might be a universal custom to so

call it. If the shoe were on the other foot, if, for illustration, the material were indubitably unrefined naphtha, and suppose unrefined naphtha rates were higher than gasoline rates, and suppose further that a defendant was indicted for shipping the material as gasoline, the Government, and particularly the Interstate Commerce Commission, would be the first to object to the defendant even attempting to show any custom of calling the material gasoline. And unquestionably the defendant would not be entitled to show any such fact in a civil case wherein was involved the determination of what rate was legally applicable; and even in a criminal case the evidence could be admitted on behalf of the defendant only on a question of intent, and not at all to negative the fact that the unrefined naphtha rate was legally applicable.

In connection with the evidence herein discussed, consideration should be given to that discussed under subdivision (i) of this Part (*post 183*), which was rejected by the court when offered by the defendant as evidence, although it was of a much higher character and negated the existence of a general custom to consider the material involved as gasoline.

It is difficult to understand upon what assumption the Government should have been allowed to introduce evidence of this class, and the defendant denied opportunity to meet it with evidence of the same general class but of much better quality. One such piece of evidence tendered by the defendant, and rejected, was a statute of Texas making it a crime to describe this material as gasoline, for purposes of shipment or sale. And the only explanation of the court's course in rejecting that evidence was the suggestion by him that the statute might have been passed at defendant's instance. While, of course, such was not the case, it is perfectly apparent that if it had been, and that fact made it objectionable or qualified it in any way, it would have been open to the Government to so prove.

The authorities cited under the preceding subdivision are all not only directly in point as to the evidence here under consideration, but the evidence is more definitely inadmissible for the reason that being declarations of others not connected with defendant, they do not come within the exception to the hearsay rule that would apply to admissions of a party.

On the theory of proving a custom or usage, they fail in substantially every particular. While it is rather a novelty to attempt to bind a defendant in a criminal prosecution by usage, still it must be that the rules applicable to proof of usage in criminal cases can certainly be no less strict than in civil cases.

To prove a custom or usage, it must be shown to be certain and uniform to be binding.

*12 Cyc. 1035.*

It must be shown to be consistent, for if it appears that there are contradictory usages they destroy each other as such.

*Ibid., 1037.*

It must be shown that the party sought to be bound had knowledge of the usage.

*Ibid., 1039.*

The evidence to establish it must not be of isolated instances but must be general and must be known.

*Ibid., 1040-1043.*

When a word has been defined by statute, custom or usage become void.

*Ibid., 1055.*

When words of a statute are ambiguous, then only can usage be resorted to to determine their meaning.

*Ibid.*, 1058, 1059.

While words are to be construed according to their plain, ordinary and popular meaning, yet if in particular situations, they have acquired by usage a different meaning, evidence may be taken to show such special meaning, and it may also be taken to show the meaning of technical words or words peculiar to sciences or arts or particular trades, or to determine the meaning of ambiguous words.

*Ibid.*, 1081.

If it be assumed for the moment that it would have been competent in this case to have attempted to show a usage to the effect that the material involved was called gasoline (which, for the reasons later shown, it would not be), it is submitted that the evidence involved fails to meet every one of the necessary attributes of proof of usage. It fails to show that it is certain or uniform. On the contrary, it shows great uncertainty and lack of uniformity.

The witnesses conceded that there were also used numerous other names, such as casinghead gasoline, raw casinghead, naphtha blend, kerosene blend, etc.

The evidence is not consistent, but directly contradictory. It shows that in many thousands of instances the defendant was accustomed to using the description "unrefined naphtha." There is no more ground for imputing usage to the course of others than to the course of defendant. There is just as much ground for asserting, based on the course of defendant, that the usage is to call the material "unrefined naphtha," as to assert the opposite.

There was no showing whatever of a knowledge of the defendant of such usage of others which would be necessary in order to bind it.

The evidence is not of a general custom common to the locality, common to the trade, or common in any respect, but is simply of individual instances. It is perfectly clear that evidence of such a character can establish nothing on the point of usage.

It fails again in the light of the Texas and Oklahoma statutes (the very locality involved), in that those statutes, in defining the word "gasoline" so as to exclude this material, have established a rule of law that would render void any supposed usage if sought to be offered to construe a contract. Surely, if in a civil case involving a contract for the sale of gasoline the proponent took the position here taken by the Government, in effect that he could deliver this material as gasoline, and offered proof of usage to the effect that this material was called gasoline, and such showing was of a usage directly contrary to the statutes of the states involved, it is obvious that he would not be permitted to make it.

The foregoing discussion, however, demonstrates the utter impropriety of attempting to prove the fact in issue by attempting to show a usage. If usage would decide the question, then defendant's usage being the only one in which the circumstances were identical, would be absolutely controlling and conclusive against the Government.

Under some circumstances it might be competent to attempt to draw an inference circumstantially that a certain material was gasoline from the fact of a usage to so call it; but, in a case of this kind, where the very question itself is *regardless of usage what is the material*, usage would be utterly irrelevant.

As previously pointed out, the published rates and descriptions *are the binding legal* rates and descriptions, and all the custom in the world would not permit a variance from them.

Assume, for example, that there was a classification on rum and another classification naming higher rates on whiskey. Now, it is a notorious fact, of which judicial notice has been taken, that there is a common usage to embrace rum, whiskey and gin under the one appellation "rum." Yet, a defendant who might under such circumstances have shipped whiskey under the description "rum," in order to procure transportation at the lower rate, would not even be heard to contend that he was entitled to do so, based on the common application of the appellation "rum" to whiskey. The reason is perfectly apparent, and it demonstrates why all the evidence of shipment as gasoline, where there were no unrefined naphtha rates in force, was improper. It is because of the surrounding *material circumstances*. In many situations, proof of common usage to call whiskey "rum" would be perfectly proper. But, where it is the essence of the case as to whether or not the material was in fact rum or whiskey, obviously such usage would be entirely irrelevant.

This brings us back to the subject considered under subdivision (a) hereof. *First*, if the word "gasoline," as used in the tariffs, is a common, ordinary, unambiguous word, it was then the duty of the court to construe it and instruct the jury, and was not the subject of evidence; and it is not competent to show a usage concerning common, ordinary, unambiguous words. *Second*, if on the contrary, as used in the tariffs, "gasoline" is not a common, ordinary, unambiguous word, but one having a technical, scientific or special trade application, then, while it would ordinarily be competent for the court to take proof of usage to establish such meaning, *it would not be in cases of this character, because jurisdiction for the purpose of producing uniformity is confided exclusively in the Interstate Commerce Commission, as pointed out by this Court in the American Tie & Timber case, as shown in subdivision (a) hereof.*

## PART IV (d).

**Evidence that the Texas Company paid gasoline rates on certain shipments to it was not competent to prove an unlawful discrimination in favor of defendant; and refusal of the court to allow defendant to show that the Texas Company subsequently sued to recover excess of gasoline rate over unrefined naphtha rate was highly prejudicial.**

Assignments of error as follows, cover this evidence: XVI (*Rec.*, p. 1558), the testimony of the witness Anderson (*Bill of Exceptions*, *Rec.*, pp. 327-339) and Government Exhibits 22 to 25, inclusive (*B. of E.*, *Rec.*, pp. 972-978) being shipping orders covering shipments to the Texas Company described as "gasoline," said Anderson being superintendent of the Totem Gasoline Company, and testified that his company had shipped material which he said was "blended gasoline" (*Rec.*, p. 332), using the description "gasoline" in shipping to the Texas Company, it not being shown whether the material shipped was of the same degree of blend as that shipped by the Gypsy Company, and not shown that the witness knew of the existence of "unrefined naphtha" rates: XVII (*Rec.*, pp. 1564-1569), testimony of the witness McCarroll (*B. of E.*, *Rec.*, pp. 340-345), superintendent for Crosby & Gillespie, to the effect that a blend of casinghead and naphtha shipped by them to the Texas Company was described as "gasoline"; LXIX (*Rec.*, p. 1625), refusal of the court to permit defendant to introduce evidence showing that the Texas Company subsequently sued to recover excess of gasoline rates over "unrefined naphtha" rates on the ground that the latter was applicable, Exhibit 142 for identification (*B. of E.*, *Rec.*, pp. 1463-1469; and *Rec.*, pp. 785-787): LXXX (*Rec.*, p. 1638), denial of motion (*B. of E.*, *Rec.*, p. 627) to strike from the record evidence (admitted by defendant, subject to exception)



(*Rec.*, pp. 625-630, 897) to the effect that certain shipments of casinghead blended with about one-third naphtha were made to the Texas Company, upon which it paid gasoline rates as described in the shipping orders (*B. of E.*, *Rec.*, p. 382).

The 36th to 40th counts, inclusive, and 81st to 85th counts, inclusive, of the indictment attempt to charge the acceptance of a concession whereby property was transported at less than the lawful rate and whereby a discrimination was practiced in favor of the defendant and against the Texas Company.

It is obvious that there might be either a discrimination against the Texas Company or a discrimination in favor of defendant. It is perfectly clear that a discrimination against the Texas Company is not a thing for which defendant could be indicted upon the theory of a discrimination in favor of the defendant. If, for example, the lawful tariff rate applicable was the rate on unrefined naphtha which defendant paid, it would be utterly immaterial in this case, and the defendant could not be charged with fault, if the Texas Company paid the gasoline rate and thus was overcharged. There is not a shred of evidence to show that the defendant knew anything about the Texas Company's affairs or in any way sought to induce the carriers to prefer it as against the Texas Company. The evidence shows, however, that the Texas Company did receive several shipments of apparently similar material at its refinery at Port Arthur, which had been billed and described by the shipper, itself in some cases, as gasoline and upon which the gasoline rate was assessed. There was not the slightest evidence however offered by the Government indicating that the Texas Company knew of the existence of the unrefined naphtha rates, from which it might be inferred therefore that it had chosen the gasoline rate as being the applicable description. On the other hand, the defendant offered to prove (*Ex. 142 for Id.*, *Rec.*, p. 1463), but was denied per-

mission to do so, that the Texas Company, after having paid the gasoline rate on the shipments involved, instituted suit against the carriers for the recovery of the excess of the gasoline rate over the unrefined naphtha rate. While one count of the Texas Company's suit rests on the ground that it had been discriminated against, the other count does not rest on such ground, but squarely on the ground that the unrefined naphtha rates are the only rates properly applicable and that it, the Texas Company, had been overcharged, (*Rec.*, pp. 1467, 1468).

While it is conceded that evidence concerning what the Texas Company paid under like circumstances would be admissible upon the charge of discrimination, *provided* it was established that defendant had been accorded less than the legal rate, and the Texas Company assessed the legal rate, still in the absence of such proof, the admission of that evidence simply begs the whole question. It of course could not tend to establish the fact as to which rate is legally applicable. That is of course a legal conclusion. The only thing it can be assumed to attempt to establish would be that the material was gasoline. When, however, it appeared that the Texas Company had, unconscious of its rights, mistakenly described the material as gasoline, and paid charges at gasoline rates, the fact that it had done so loses all probative force toward establishing that the material was in fact gasoline.

Apart, therefore, from the question of the propriety of admitting the evidence in the first instance as to what the Texas Company had done, it is apparent that the exclusion of evidence offered by defendant tending completely to negative and explain away any inference which might have been drawn from its previous course, was most highly prejudicial, unjust and unfair to defendant. It is difficult to conceive of anything that would more completely destroy any inference that the material in fact was gasoline drawn from the fact that the Texas

Company had described it as gasoline and paid the rates applicable thereto on it, than the fact that the Texas Company was now prosecuting a suit against the Director General for the recovery of the difference between the unrefined naphtha rate and gasoline rate, on the ground that the material was in fact unrefined naphtha and entitled to move on the unrefined naphtha rate.

This evidence should have been admitted for the further reason that in view of the court's having admitted the evidence upon the theory of showing a usage, discussed in the preceding subdivision, this evidence would be directly relevant to rebut any such supposed usage, because here it is the *sworn statement* of one of the concerns whose practice had been cited towards establishing such usage, to the effect that said practice had been followed through error, and asserting that it was not only not correct, but, in addition to this, directly and assertively contradicting the inference sought to be implied from the supposed usage.

Where evidence of the character discussed in subdivisions (b) and (c) hereof has been admitted, even without objection as to its relevancy, it is generally held error to deny the right to the opposing party to show the same character of evidence; and where it is admitted over objection, as was the case here, it is universally held error to deny the opponent the privilege of showing the same character of evidence.

1 *Wigmore on Evidence* (2nd ed.), Secs. 34, 35, 36.

**PART IV (c).**

**Evidence that certain witnesses had operated automobiles with insufficiently identified materials, admitted as tending to show that proper name of material shipped to defendant was gasoline, was incompetent and prejudicial.**

This evidence is the subject of the following Assignments of Error: LVI (*Rec.*, pp. 1605-1609), testimony of the witness Downing (*Bill of Exceptions, Rec.*, pp. 810-814), manager for Crosby & Gillespie, that he used the product of their casinghead plant to run his car, the material not being shown to be similar even to that shipped to defendant, and the witness being unable to give even the gravity of it: LVIII, LIX (*Rec.*, pp. 1612-1615), testimony of witness Dykema (*B. of E., Rec.*, pp. 830, 831), an expert called by the Government, that in his opinion a material even lighter than one he used the night before would run a car (*Rec.*, pp. 825-827); the testimony of the same witness that the "product from the compression of natural gas" is commonly known as gasoline (*B. of E., Rec.*, p. 840); LX (*Rec.*, pp. 1615, 1616), the testimony of the witness DeBar (*B. of E., Rec.*, p. 882), another Government expert, to the effect that he had run cars several hundred miles on casinghead material, not identified as being even similar to that shipped defendant, and some shown to be in fact different and other to have come from a different locality; and LXXXI (*Rec.*, pp. 1640-1645), motion to strike out the foregoing evidence (*B. of E., Rec.*, pp. 625-630, 897).

This evidence is substantially similar in character to that discussed under subdivision (c) of this Part, and as it is subject to the same criticisms and governed by the same authorities, it will not be discussed at length.

Three witnesses were permitted to testify in substance that they had operated motor cars on material a portion or all of which was casinghead product. No attempt was made however to identify the character of the material as being identical with or even substantially similar to that shipped to defendant.

This evidence, however, is subject to further objection as well. It was a purely collateral question as to whether some other casinghead material might or might not run a car. The only thing that was in issue grew out of the definition of all the witnesses for the defense of gasoline as being a material suitable for use in running a motor car under ordinary circumstances. It is not a corollary to this that any material that would under any circumstances propel a motor car is gasoline. On the contrary, the evidence of more than one witness showed that they had personally known of instances of crude oil actually running a motor car. Of course, no one had the temerity to claim that crude oil was gasoline.

The witness DeBar, who was permitted to testify that he had run cars several hundred miles on casinghead material procured from other localities, and not identified as being even similar to that in issue, showed on cross examination that while it was possible for an expert like himself to use the material, it was not suitable for the "common people" to use, and that he was not willing to trust his wife to use it. It is apparent therefore that his testimony could have no value whatever towards attempting to establish that the material shipped to defendant was gasoline, *first*, because the material he was talking about was not necessarily the same material as that shipped to defendant, and *second*, that it did not tend in the slightest to indicate that the material came within the definition "gasoline" above mentioned, but, on the contrary, expressly showed that it was not a suitable material for ordinary use.

This evidence again illustrates the impropriety of attempting to prove a custom by individual instances. Here were three witnesses, two of them offered as experts, and the third from his occupation apparently expert in the handling of the material, so that even if it were assumed that the material used by them was identical with that shipped, the mere fact that they, experts, had been able to use it to propel a car could have no probative force whatever to establish that it was suitable for ordinary use. And, as above pointed out, it was conceded by one of them that his ability to use it depended upon the fact of his being an expert, and that it was not suitable for ordinary use.

#### PART IV (f).

**Admission, over objection for lack of proper foundation, of testimony as to an alleged test by a Government expert, which was subsequently shown to have been a false test, was highly prejudicial even though subsequently stricken out.**

Assignments of Error LV and LVII (*Rec.*, pp. 1602-1605, 1609). During the trial one of the Government experts, W. P. Dykema, accompanied by other Government witnesses, but not by any one connected with the defense, attempted to make a test to demonstrate that raw casinghead would run an automobile without difficulty. He proceeded to the town of Jenks, and procured from a casinghead plant adjacent to one of the Gypsy Company's, a quantity of raw casinghead, which he placed in the car. The witness Moss, an attendant at the casinghead plant, was permitted to testify that he furnished the material, saw it placed in the car, and saw the car driven off, in the face of objection to his testimony on the ground that he was unable to say definitely whether or not Dykema had drained the reserve tank of the car (*Rec.*,

pp. 807-810); and, following him, Dykema was permitted to testify (*Rec.*, pp. 824-828) that he used the material procured at that plant and drove the car into Tulsa from Jenks upon it without difficulty. This in the face of insistent objection upon the ground that there was no proper foundation for his testimony, in that he himself, on preliminary cross examination, admitted that he did not know whether or not he had completely drained the car, and that he did not know whether the car had a reserve tank, and that if it had he of course had not drained it (*B. of E.*, *Rec.*, pp. 824-828).

The defendant fortunately was able subsequently to find and produce the chauffeur of the car used in the alleged test, and to prove that the car did in fact have a reserve tank, which was not drained, as a result of which the actual fact was the car was propelled by the ordinary gasoline instead of the casinghead product (*Rec.*, pp. 892, 896).

While the court thereupon struck out Dykeman's testimony, its admission, in the face of the preliminary cross examination showing that the witness would manifestly be incapable of giving honest testimony on the subject, was clearly an abuse of discretion, and it was highly prejudicial to the defendant, because, by reason of the manner in which the court cross examined the chauffeur, the jury could not help but have been left in doubt as to whether the chauffeur or Dykema had testified untruthfully. The jury might very readily have suspected either that the chauffeur was testifying untruthfully or that Dykema had been deliberately imposed upon. The instructions of the court to disregard Dykema's testimony on the subject could not in such circumstances have cured its improper admission. Dykema, being an alleged expert, certainly ought (as the court subsequently stated) to have made a careful examination to ascertain whether the conditions were proper to afford an honest test, and



his failure to have done so, demonstrated by preliminary cross examination, ought to have warned the court that his testimony was liable to be either wilfully false or wantonly reckless, and under such circumstances the court ought not have permitted him to proceed with giving his testimony and to have placed the burden upon the defendant of procuring the necessary evidence to establish its falsity. That the defendant was able successfully to do so, however, did not cure the situation; for, as above pointed out, the jury might readily have reached a mental conclusion, notwithstanding the court's instructions, that the chauffeur rather than Dykema testified falsely. The court, being as it was on notice of the existence of the question whether or not the reserve tank had been drained, ought to have placed the burden on the Government of ascertaining and proving the fact before admitting further testimony about the matter, and had this been done the result would of course have been that neither Dykema nor the chauffeur would have testified further in relation to the matter, and there could have been no question of veracity between them.

#### PART IV (g).

**The admission, before the establishment of the *corpus delicti*, of evidence supposed to tend to establish intent was improper; and the evidence in question was not competent for the purpose for which it was admitted.**

Assignments of Error XXVI, XXXVII (*Rec.*, pp. 1598, 1599), XLVI (*Rec.*, p. 1601), LXXXI (*Rec.*, pp. 1640-1645) cover the evidence involved. It consists in Government Exhibits 66 (*Bill of Exceptions, Rec.*, pp. 1272, 1289), 77 (*B. of E., Rec.*, pp. 1295, 1300), 78 (*B. of E., Rec.*, pp. 1301-1307), 100 to 102, inclusive (*B. of E., Rec.*, pp. 1383-1405), being books containing records of distillation tests, and Exhibits 80 to 84, inclusive (*B. of*

*E., Rec., pp. 1308-1362*), being statements showing the quantity of casinghead material received at the refinery at Port Arthur. Assignment LXXXI (*Rec., p. 1640*) covers the denial of the motion to strike out this evidence (*B. of E., Rec., pp. 625-630, 897*).

It appeared that there had been a practice to enter in the distillation test record, upon the tests of consignments of casinghead material, the data shown by the test, together with a description sometimes reading "Kiefer gasoline," sometimes reading "Kiefer gas," and sometimes reading "Kiefer" (Kiefer being the name of the point of origin) up until June, 1917, after which time the description read "unrefined naphtha"; and in these records wherever the word "gasoline" or "gas," following the word "Kiefer," occurred previous to June, 1917, they had been erased (*Rec., pp. 500-520*). Exhibits 80 to 84, inclusive, were monthly statements, the originals of which were sent to the general office at Pittsburgh, and the duplicates kept at the refinery at Port Arthur, which showed the receipts of casinghead material at the refinery, and until the month of June, 1917, the headings on these statements had read "Receipts of Kiefer gasoline," and from June, 1917, they read "Unrefined naphtha from Gypsy Oil Company." On the duplicate copy of these statements kept at the refinery the headings had been cut off up to the month of June, 1917. These records and statements were admitted on the theory that the earlier use of the term "gasoline" constituted an admission, and that the erasures and deletion thereof indicated conscious guilt, and that they were therefore admissible to establish intent. At the time they were admitted the Government had offered no direct evidence whatever to establish that the material shipped was in fact gasoline, but it simply offered the evidence hereinbefore considered, to the effect that under certain different circumstances the Gypsy Oil Company, the defendant, and other parties not con-

nected with the defendant, called or shipped the material as "gasoline."

There was no evidence tending to show when, where or by whom the erasures and deletions were made, other than the defendant admitted that they existed at the time the books and statements were turned over to the Government upon the grand jury inquiry (*Rec.*, pp. 500-508).

It was shown, however, that at or about the time the practice arose (December 2, 1916), of describing the material for shipment as "unrefined naphtha," instructions were issued at the refinery to employees to use that name thereafter in describing the material (*Rec.*, pp. 495, 501).

It was further shown that the entries in the distillation test books, which were merely lead-pencil blotters, were made by laboratory test boys, whose sole duty it was to put down the results of the tests which they made, and whose duty did not involve characterizing or describing or classifying the material in any way, and who were shown to be unequipped to be capable of doing so (*Rec.*, pp. 290-303, 468-474, 489-497).

It was also shown that the originals of the statements Exhibits 80 to 84 had not had the heading "Kiefer gasoline" deleted, but that they remained as originally written (*Rec.*, pp. 1354, 1359).

It was not shown that the erasures were made by or at the instance, or with the knowledge or consent, of any one within the scope of whose employment matters affecting freight rates and classifications were embraced; and there was no evidence from which even an inference might be drawn that any one having anything to do with freight rates and classifications ever saw or even knew of the existence of the records in question.

It is therefore apparent (a) that the evidence was not even competent to prove intent, and (b) that its admission on that theory, before the establishment of the *corpus delicti*, was bound to be highly prejudicial.

(a) Evidence to be admissible solely on the ground of establishing intent, ought to be of such a character that it could be explained upon no other reasonable hypothesis.

The most natural, reasonable and plausible explanation as to how these erasures and deletions occurred is apparent from the evidence. The boys handling these records had been given certain instructions, which they failed to carry out at once. Upon finding the matter becoming the subject of inquiry, it was the most natural thing conceivable that they would endeavor to conceal their failure to carry out instructions by making these erasures. It should all the while be borne in mind that before these entries could rise to the dignity of being considered admissions that the material was in fact gasoline, it would have to appear that the entries were made at least by some one within the scope of whose employment there was embraced the designation or classification of the material; and the evidence clearly showed that these boys had no functions of this character. And it should likewise be not forgotten that the very fact that the name "gasoline" when so used was always qualified with the prefix "Kiefer" is evidence of recognition of a distinction between that material and the material ordinarily known as "gasoline." On the other hand, in the light of the fact that the permanent records at Pittsburgh were not changed, nor any other record, the fact that it was freely admitted by defendant that it had been its practice to call the material "Kiefer gasoline" and "casinghead gasoline," and that on shipping orders previous to December 2, 1916, to Port Arthur, and at all times to Pittsburgh, it called the material "gasoline," all of which it freely admitted; it is not even a reasonable assumption that the erasures and deletion in question could operate as an attempt at concealment, the only theory upon which they could be supposed to be evidence of intent.

Intent to be imputed to the defendant from the act of some employee must be the act of an employee having at least a reasonable degree of relationship to the subject-matter involved. The intent would consist in an intent to procure an unlawful concession in relation to the transportation of property. An act done by some employee of the Company before or about the time of the transportation, which would have a tendency to bring about such a result, might reasonably be considered to be evidence of the existence of an intent to do it. But evidence of an act done subsequently, to be admissible at all, must be of a character betokening conscious guilt, such as flight, concealment or destruction of weapons, etc.; and it is perfectly obvious that in such case it could only be the flight, concealment or destruction by the person responsible. Here, the records involved are no part of records having anything to do with freight charges or classification matters, and it would have been just as reasonable to have received as evidence of intent the act of any ex-employee having no more to do with the matter than these laboratory boys, in leaving the country, for example, on the theory that it would constitute flight, and thus be indicative of guilt.

In *Elgin, J. & E. Ry. Co. v. United States*, 253 Fed. Rep. 907, the Circuit Court of Appeals for the Seventh Circuit had before it for review the conviction of a railway company under the Elkins Act, and, in considering a portion of the charge of the District Court, which was in substance to the effect that knowledge of various employees of the corporation of various facts, which, if collected into the mind of one agent, would amount to sufficient knowledge of the requisite facts, would be sufficient to impute knowledge to the corporation, said:

“It would seem that, as stating a rule of general application, the charge is too broad, and that under some circumstances it would be error to give it. For instance, if in the case before us there were

evidence that a car repairer or track hand or other like employee of the company actually saw the contents of the cars in question before they were billed out, and knew they contained strawboard and not paper boxes, the jury under such a charge would be required to find that this knowledge of such an employee was knowledge of the Company. But in the nature of things the knowledge of such an employee, who has no function whatever with respect to receiving or classifying freight, and no concern whatever with shipments or rates or tariffs, and no occasion, purpose or duty to communicate to his employer such incidental knowledge thus coming to him, would not ordinarily be the knowledge of the Company. A corporation is not chargeable with knowledge of facts which become known to its agent, unless the agent in the line of his duty ought and would reasonably be expected to communicate the knowledge to his principal. *Neal v. M. E. Smith Co.*, 116 Fed. 20, 54 C. C. A. 226; *Korn v. Chesapeake & Ohio Ry. Co.*, 125 Fed. 897, 62 C. C. A. 417; *Reed v. Munn*, 148 Fed. 737, 80 C. C. A. 215; *Mechem on Agency* (1st ed.), Secs. 718-721; *Tiffany on Agency*, p. 262." (p. 912.)

In *N. Y. Central Railroad Co. v. United States*, 212 U. S. 481, the Court had under consideration the validity of that section of the Elkins Act which imputes the act of an agent within the scope of his employment to the carrier. It is clear from a reading of the opinion of the court in that case that it sustained that portion of the act in question solely because of the limitation therein contained of *acting within the scope of the employment*.

(b) While it is true that not so much attention is paid in the case of misdemeanors as in felonies, to the rule that evidence of intent is not admissible before the establishment of the *corpus delicti*, nevertheless, when, as here, the admission of such evidence produces a situation where it is impossible to judge how far the jury might have been moved to reach a conclusion by this very evi-

dence, of the existence of the *corpus delicti*, it is of course improper to permit its introduction before the independent establishment of the *corpus delicti*.

“f. *Corpus Delicti*. The prosecution has the burden of proving that a crime has been committed before the jury proceed to inquire as to who committed it, and a conviction cannot be sustained unless the *corpus delicti* is clearly established.”

12 Cyc. 382.

“II. *Corpus Delicti*. As a matter of good practice it is preferable to prove the *corpus delicti* before any evidence is offered to implicate the accused; but the matter is largely in the discretion of the court; and while the state may and should prove the *corpus delicti* first, it is not error to receive evidence against the accused before the *corpus delicti* has been proved.”

*Ibid.*, 556.

“The confession or mere statement of the accused is not sufficient to establish the *corpus delicti*. The proposition called the *corpus delicti* must be proven by evidence either circumstantial or positive outside of the confession, declarations, or admissions of the defendant, before such confession, etc., can be taken as sufficient to warrant a jury in convicting.”

5 *Encyclopedia of U. S. Supreme Court Reports* (Michie), 126.

In *United States v. Searcey*, 26 *Fed. Rep.* 435, the court said:

“In all trials for crime the prosecution must prove to the satisfaction of the jury that a crime has been committed before the jury proceeds to inquire as to who is the criminal.”

In *Alberty v. United States*, 162 *U. S.* 499, and in *Starr v. United States*, 164 *U. S.* 627, the Court reversed



convictions on account of a charge (in identical language in both cases) because of improper weight given to a circumstance of flight, a part of the particular charge in question being:

“Flight is always relevant evidence when offered by the prosecution, and that it is a silent admission by the defendant that he is unwilling or unable to face the case against him. It is in some sense feeble or strong, as the case may be, a confession, and it comes in with other incidents, the *corpus delicti* being proved, from which guilt may be cumulatively inferred.”

While, as above pointed out, these cases were reversed upon the ground of improper weight given this evidence by the charge, the order of proof not being in question, since, as shown by the language of the charge, it appeared that the *corpus delicti* was independently proved, yet it is significant that the fact was deemed important.

Wigmore states the rule:

“*Order and Sufficiency of Evidence of Corpus Delicti.*—(a) That the evidence of the *corpus delicti* should be put in *before* the confession is certainly good practice and is occasionally said to be the rule; but the better view is that the trial judge may determine the order of this evidence, on the general principles otherwise prevailing.” (Italics his.)

3 *Wigmore on Evidence* (2nd ed.), Sec. 2073.

See, also:

*Ibid*, Secs. 2072, 2081, 1867, 1869.

In *Goff v. United States*, 257 *Fed. Rep.* 294, the court had before it the review of a conviction upon an indictment charging introduction of liquor into Oklahoma; and the only proof offered by the government was the fact that the defendant had liquor concealed in his automobile,

and no other proof of the fact of its introduction into the state than statements or admissions made by the defendant, which it was insisted were not alone sufficient to establish the fact of such introduction. The defendant demurred to the evidence on the ground that it was insufficient to prove the crime charged, for the reason that the *corpus delicti* was not established. In reversing this conviction, the court reiterated the rule laid down by it in *Naftzger v. United States*, 200 Fed. Rep. 494, as follows:

“A conviction upon extra-judicial confession, or acts or declarations of a prisoner, will not be sustained, without corroborative proof that the property was in fact stolen.” (257 Fed. 296.)

This court further said:

“We do not hold that declarations of a party may not be considered in finding the *corpus delicti*; but, standing alone, they are insufficient, and other facts and circumstances cannot be said to be corroborative, when they point as directly to some other offense as they do to the crime charged.” (p. 296.)

In this case, had the trial court observed this rule the defendant undoubtedly would have rested on the Government's case, and in such event it is inconceivable that the jury would have convicted at all without this evidence; and even had it done so, such a verdict would unquestionably have been set aside.

As the record now stands, this court is unable to determine how much the jury may have been influenced by this evidence in reaching its conclusion that the material could be called “gasoline.” But it is quite apparent that in all probability this evidence was extremely potent in bringing about that conclusion. The very fact that the court admitted it at the time it did could not but tend to influence the jury to regard all subsequent evidence with

suspicion, because of the natural inference that the court, in admitting this evidence on the theory of intent, must have believed a substantive offense existed.

#### PART IV (h).

**The evidence concerning the rates in force does not sustain the charge.**

Assignments of Error LIV (*Rec.*, p. 1602), Government Exhibit 139 (*Bill of Exceptions*, *Rec.*, p. 1461); LXXIV (*Rec.*, pp. 1631, 1632), Government Exhibits 36 to 42 and 45 to 56 (*B. of E.*, *Rec.*, pp. 978-1212) and LXXXIII (*Rec.*, pp. 1646, 1647). Charge (*B. of E.*, *Rec.*, pp. 912-930).

The charge of the court (*B. of E.*, *Rec.*, pp. 912-930), that the rates alleged by the indictment to have been legally established and in force during the period covered by the indictment, for the transportation of gasoline between the points charged, were so established and in force, was based on Government Exhibits 36 to 42, inclusive, and 45 to 56, inclusive (*B. of E.*, *Rec.*, pp. 978-1212), being excerpts from tariffs produced from the files of the Interstate Commerce Commission, which it was maintained by the Government show such facts.

These assignments of error would be pressed with reluctance because of their technical nature, were it not for the fact that the whole prosecution itself depends on the most extreme technicality, when it is remembered that the rates on unrefined naphtha were openly established by the carriers at defendant's request for the express purpose of transporting the traffic involved; that the defendant caused notice to be given to the initial carrier that upon the becoming effective of said rates the commodity theretofore shipped under the description "gasoline" would thereafter be shipped under the new description; that the traffic was openly carried on this de-

scription with full knowledge on the part of the safety inspectors whose duty it was to change the same if erroneous, for a period of two years, when the Government stepped in and said, "You have made a mistake in the choice of name for the publication of rates; we shall take advantage of such mistake and criminally prosecute you." It is of course not conceded that any mistake was made, but confidently asserted that the description adopted was correct and appropriate. Nevertheless, in such a situation, the Government ought in simple justice to be held to the strictest of proof upon the very technicality on which it depends. It maintains, as it necessarily must, that the material shipped is gasoline *as described in the tariffs* which it asserts were effective. Turning then to these tariffs, it is to be observed that every one of the tariffs purporting to name rates on gasoline during the period of time involved refer to and are governed by the western classification currently in force. As an illustration, Government Exhibit 36, Southwestern Lines Tariff No. 26-T, shows on its face that it is governed, except as otherwise provided therein, by the western classification (*Rec.*, pp. 978-982).

Turning to Government Exhibit No. 37, western classification (*Rec.*, p. 1062), we find (*Rec.*, p. 1081) gasoline to be listed *as a petroleum product*, and the basis for computing the weight thereof is of gasoline *as a petroleum product* (*Rec.*, p. 1092). The weights charged in the indictment are, as shown thereby, established on the basis provided by the western classification, and the tariffs are complete only by taking into consideration these provisions of the classification. Consequently, the rates named on gasoline shown by the evidence are on gasoline, *a product of petroleum*, and do not purport to be otherwise.

The evidence in the case is clear, it being admitted even by the Government's own experts, that it is not known whether casinghead gas comes from petroleum at

all or not. Certainly it is not a product of petroleum in the sense of having been produced from it by any human agency. And it may well be the fact that it does not come from petroleum at all, but exists in the same earth chambers with petroleum, independently, however, and originating from other sources (*Rec.*, pp. 676, 890).

In such circumstances, it is obvious that no jury could find beyond a reasonable doubt the essential elements of the alleged offense. Unless the commodity shipped is a product of petroleum, the rates named on gasoline, charged in the indictment, do not cover the commodity shipped at all. This situation applies to every count of the indictment.

The 36th to 40th, inclusive, and 65th to 100th, inclusive, counts of the indictment relate to transportations during the period of federal control, which began December 28, 1917, and continued up to beyond the time dealt with in the indictment. It was and is maintained by the defendant that there were no rates legally in force during this period of time, due to the failure of the Director General of Railroads of the United States to adopt, in the manner and form provided by law, the tariffs of the carrier companies whose properties were taken over by him.

Section 6 of the Interstate Commerce Act, as amended, and necessarily claimed by the Government to be in force at the time involved (*24 Stat. L. 379, 25 Stat. L. 855, 34 Stat. L. 584*), provides that carriers subject to the act shall file with the Interstate Commerce Commission, and print and keep open to public inspection, schedules showing the rates for transportation; prohibits transportation unless said rates shall have been so filed; prohibits changes therein except after thirty days' notice to the Commission and the public, published as required, with the proviso that the Commission may in its discretion, for cause, allow changes upon less than the notice specified,

“or modify the requirements of this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions,”

and with the further proviso that the Commission may make suitable rules and regulations governing the form of the schedules; and that

“the names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission.”

And the Elkins Act (*32 Stat. L. 847, 34 Stat. L. 584*), under which this prosecution is brought, makes the offense consist in transportation

“at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and the acts amendatory thereof.”

Pursuant to the authority contained in the Act to Regulate Commerce, to prescribe the manner and form of publication and adoption, the Interstate Commerce Commission, with the express purpose of meeting situations substantially identical with those here involved, did establish rules and regulations to cover the adoption by one carrier of rates published by another carrier and in force upon an occasion of sudden transfer of operations from the previous carrier to the second carrier. These rules and regulations are Exhibit No. 57 (*Rec., p. 1212*), being Circular No. 18-A of the Interstate Commerce Commission, which was in force at the time the Director General took over the operations of the corporate carriers (*Rec.,*

pp. 391, 392); and as will be seen by reference to Rules I and J set forth in full on *pages 1213 and 1216 of the Record*, it provides that in case of change of ownership or control of a carrier, the one whose line is taken over shall unite with the other in the publication of a supplement to the existing tariffs on file with the Commission, the former withdrawing and the other establishing such tariffs; that such supplements shall be numbered consecutively as supplements to the tariffs involved; and that if the new carrier intends to use tariffs issued by agents of the old carrier, the new carrier shall

“issue, file and post, with I. C. C. number, and adoption notice substantially as follows:

“The (name of carrier) hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, filed with the Interstate Commerce Commission by the (name of old carrier) prior to (date) the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which it has heretofore filed with said Commission.”

And it is provided that such adoption notice may be made effective and filed on immediate notice (instead of the thirty days required by the act).

As further pointed out by the Commission in this circular, a carrier surrendering control of its property has no further right to publish rates, except under proper authority from the carrier to whose control the property passes, and the public has a right to available and lawfully applicable rates over that property.

If it be contended that the Director General was not obligated to comply with these requirements of the law and regulations made pursuant thereto, such contention



admits the argument for defendant in Part II (c) hereof to the effect that the Director General, being not subject to the requirements of the Act to Regulate Commerce, no offense could exist under the Elkins Act in respect to transportation by the Director General, because of the absence of any requirement to establish rates in the manner "required by said Act to Regulate Commerce and the acts amendatory thereof" (Elkins Act, *supra*).

If, on the other hand, it is admitted that the requirements of the Interstate Commerce Act concerning publication and filing of tariffs were in force, then it is perfectly clear from the record that the Director General did not comply with such requirements, and consequently there was no rate legally in force after he assumed control of the properties (*Rec.*, pp. 374-9, 392-4).

The Government attempted to meet this situation by offering in evidence Government Exhibit 139 (*Rec.*, pp. 1461, 1462), which it pretends constitutes such adoption. This exhibit is a circular issued by the Director General of Railroads, being Order No. 1, which recites that the Director General, pursuant to proclamation of the President, has taken possession and control of certain transportation systems, the officers, agents and employees of which are directed to take immediate and careful notice of the proclamation, and, in addition to the provisions thereof, orders that they shall continue in their existing relation, directing the manner of operation, that designation of routes by shippers is to be disregarded when speed and efficiency of transportation service may be promoted, that traffic agreements between carriers must not be permitted to interfere with expeditious movements, that new through routes are to be established, and

"Existing schedules of rates and outstanding orders of the Interstate Commerce Commission are to be observed, but any such schedules of rates or orders as may hereafter be found to conflict with the purposes of said proclamation or with this

order shall be brought immediately by wire to the attention of the Director."

The Government produced as an expert witness an employee of the Tariff Division of the Interstate Commerce Commission, who brought with him from the tariff files of the Commission the schedules assumed to cover the transactions involved in the indictment. He brought all the tariffs and supplements thereof which he found in the tariff files of the Commission affecting the matter, and there was not included among them any supplements of adoption by the Director General of the existing tariffs (*Rec.*, pp. 392-4). Upon objection on behalf of defendant, on the ground of lack of proof of adoption of the tariffs by the Director General, and the intimation of the court that he would hold the proof respecting tariffs during the period of federal control fatally defective for lack of such adoption, then, and then only, did counsel for the Government wire the Interstate Commerce Commission to forward a copy of this order of the Director General, and offered it, together with the certificate of the Secretary of the Commission appended to the exhibit, as establishing such adoption (*Rec.*, pp. 374-9, 392-4). The certificate of the Commission, as will be observed, is carefully worded to go as far as the facts would permit towards creating the impression that the order has been lodged with it as a tariff publication. But the very form of this certificate, by its failure to go that far, convincingly shows, as does the failure of the expert to find or bring it from the tariff files of the Commission, that this order was not filed as any supposed compliance with the requirements concerning adoption of tariffs, but, on the contrary, that a copy was simply sent to the Commission as a matter of information to it and in no sense as a tariff publication.

By reference to Exhibits 36 to 42, inclusive, and 45 to 56, inclusive (*Rec.*, pp. 978-1212), it will be observed that

the tariffs actually coming from the tariff files of the Interstate Commerce Commission all bear on their face a stamped notation, similar to that shown on page 979 of the record, reading:

“Public File. Amended by I. C. C. No. 1186; Effective 5-2-1917. Cancelled by I. C. C. No. 1226; Effective 5-10-18. Received; Interstate Commerce Commission; 4-1-005; June 12, 1914; Division of Tariffs.”

Yet there is no such stamp, nor any other pretense, upon the Director General's order (*Exhibit 139*), indicating that it ever was in the tariff files or considered to be any part thereof. Quite apart from this, it is obvious that this order fails to comply with the form provided by the Interstate Commerce Commission hereinabove set forth for adoption of tariffs. It has no pretense to being a numbered supplement to tariffs, and there is no withdrawal on the part of the carrier corporations. There is no proof whatever of its being published as a tariff supplement, kept open to public inspection, or otherwise treated as a tariff publication. There is no adoption of publication agencies, and several of the exhibits, like Government Exhibit 41 (*Rec., pp. 1110, 1111*), being supposed tariff publications after the beginning of federal control, purport to be issued by agents, not on behalf of the Director General but on behalf of the former carrier corporations (*Rec., p. 1111*).

It should be borne in mind that this is a criminal case, and that certainty is required therein. It is not the defendant that is relying on technicalities, but it is the prosecution which is wholly relying on technicalities, and it should therefore be held to the highest degree of certainty in the attempted establishment of its contention. Such certainty requires, in order to constitute an offense, a showing that there was a departure from rates established and filed in the manner and form *as required by*

the Interstate Commerce Act, and it is submitted that the Government has failed to make the requisite proof on this score.

#### PART IV (i).

**The rejection of evidence offered by defendant showing use of names other than "gasoline", by other parties; the representations actuating the carriers in establishing the unrefined naphtha rates; the fact that the laws of Texas prohibit and make criminal the calling of the material shipped gasoline or gasoline in conjunction with any other word; that the laws of Oklahoma concerning gasoline do not embrace this material; the fact that inspection and taxation by the corporation commission of Oklahoma does not embrace this material as gasoline, —was erroneous.**

Assignments of Error LXII (*Rec.*, p. 1618), rejection of the evidence offered on cross examination of Government witness League showing that there had been a controversy between himself and another inspector of the Bureau of Explosives as to the proper designation of the material shipped by the Gypsy Oil Company, which controversy had been by them submitted to the head of the Bureau of Explosives, who had in turn instructed these inspectors that the description used by the Gypsy Oil Company was proper under the tariffs (*B. of E., Rec.*, pp. 437, 438): LXIII (*Rec.*, pp. 1620-1622), rejection of evidence offered on cross examination by the witness League, who had testified on his direct examination that casinghead producers with whom he came in contact were accustomed to describing their product as gasoline, to the effect that at a meeting of a large number of the casinghead producers of the locality which he attended, there was discussion among them in his hearing of the proper name by which the material should be described and the divergence in nomenclature concerning it as be-

tween the tariffs and the safe transportation rules (*B. of E., Rec., pp. 439-441*): LXIV (*Rec., p. 1622*), rejection of evidence offered upon cross examination of Government witness Powers, to the effect that he had established the rates on unrefined naphtha based on the representations of defendant's traffic manager that it was a low grade article to be shipped, treated and reshipped to Port Arthur to be further finished (*B. of E., Rec., pp. 559-566*): LXV (*Rec., pp. 1622, 1623*), rejection of the evidence offered on cross examination of Government witness Reilly, to the effect that in establishing the rates on unrefined naphtha he was governed by the fact, represented, that it was an unfinished product and that the degree of finishing or refinement or the method of production did not enter into the question of what might be shipped under the description (*B. of E., Rec., pp. 567-573*): LXVI (*Rec., pp. 1623, 1624*), rejection of the statute of Texas (Act of March 24, 1919) offered in evidence, which makes it a criminal offense in that state to describe the material here involved either for purposes of sale or transportation as gasoline or gasoline coupled with any other word (*B. of E., Rec., pp. 722-727, 794-796*): LXXI (*Rec., pp. 1629, 1630*), rejection of section 4353 of the Revised Laws of Oklahoma, offered by the defendant as evidence (*B. of E., Rec., pp. 791-793*) showing that state prohibits sale of this material for domestic uses: LXXIII (*Rec., p. 1631*), rejection of testimony offered (*B. of E., Rec., pp. 884, 885*) on cross examination of Government witness DeBar, to the effect that the State of Oklahoma, through its Corporation Commission, does not treat the material involved as gasoline with respect to taxation and inspection of gasoline.

It is difficult to conceive upon what theory the rejection of this evidence could be justified, in view of the evidence of the Government, admitted in its direct case. We do not contend that the fact that the head of the Bureau of Explosives instructed his inspectors that the descrip-

tion "unrefined naphtha" used by the Gypsy Oil Company was authorized by the tariffs, established that as a legal conclusion. It was not offered or suggested that it was admissible upon any such theory. It would seem, however, to be apparent that it was admissible upon at least two theories: *One*, as cross examination of the witness who had theretofore testified that those with whom he came in contact were accustomed to calling the material "gasoline," whereas here was an instance directly contradictory, of his chief instructing him to the contrary. Apart from this, any number of witnesses had been permitted to testify for the Government that there was a custom of calling the material "gasoline." If such evidence was admissible, clearly the defendant ought to be allowed to show instances of other people pursuing a different course. Here was a man whose functions naturally brought him in contact very much with the subject, and his views of the custom would be of much more value than the ordinary individual's. *Again*, it was a part of his duty to see that the proper descriptions were used, and he was under a legal obligation to prevent the use of the name "unrefined naphtha" on material to which it did not properly apply (*Rec., pp., 435, 436*).

As to the evidence of the meeting of casinghead producers, this was likewise admissible on at least two grounds, *i. e.*, cross examination of the witness and as negating any supposed unanimity of custom. The witness had testified that certain casinghead producers with whom he came in contact were accustomed to calling the material "gasoline." Yet here was a meeting of a majority of the casinghead producers of the locality where the question of proper nomenclature was directly in controversy, thus contradicting the inference sought to be raised from his direct testimony to the effect that there was a custom of calling the material "gasoline," and the evidence likewise tended to negative the existence of any such supposed custom.

While, as maintained under subdivision (3-a) of this Part, it is urged that authority to construe the scope of a tariff classification is exclusively confided to the Interstate Commerce Commission, still, with the trial court denying that view, it became and was most important to ascertain the meaning of the term "unrefined naphtha." This would be so even if the court were of the view that "gasoline" was undoubtedly an appropriate name for the material; for, if "unrefined naphtha" was also an appropriate name, there would of course have been no offense involved in utilizing the description carrying the lower rate. Indeed, there is doubt as to whether it would have been proper to have used the description "gasoline" if the description "unrefined naphtha" would also embrace the material, because the rates under the latter description were put in as commodity rates expressly to cover the traffic. It was contended by the Government that "unrefined naphtha" was not an ordinary term or one in general use, and it was not contended by defendant that it is. Indeed, it is highly improbable that defendant would ever have conceived asking for the establishment of rates upon this description, but for the fact of their establishment in contiguous territory for the traffic of the Carter Oil Company, thus bringing the description, and more especially the basis of a 2-cent differential over the crude oil rate, established by the Commission in the *National Refining Company case*, to the attention of defendant, thus indicating the opportunity to obtain rates on an intermediate basis which it had long sought, to cover the transportation of an unfinished product, asking for them however under the name "gasoline," and which it is shown by the carrier's letters was declined because of the fact that it would disturb the refined oil rate basis.

It is therefore apparent that the term was not an ordinary word as to which the court might have recourse to a dictionary for its interpretation. Indeed, if it was,



it would then have been the duty of the court to have construed it and instructed the jury, and not to have permitted the evidence, as it did, from a number of witnesses upon the question of its meaning. In such case the two best possible sources of evidence as to the proper meaning of the term would be (a) those engaged in the business (and who were heard) and (b) those who established the description and rates.

Messrs. Powers and Reilly were the gentlemen that did the latter. Defendant sought to show that in the use of the words as published by them in their tariffs they had not intended to limit, and therefore had not limited, them to any such construction as that sought to be given it by the Government, of excluding material supposed to have undergone a process of refining by nature under the earth, or one free of impurities, but that they meant merely to provide for the transportation of an unfinished naphtha material. This testimony was of the greatest importance, when it is remembered that the controversy finally resolved itself into merely a question of whether "unrefined" and "unfinished" were synonymous. The Government was ultimately compelled to concede that the material is quite properly denominated "naphtha" and that it was in fact unfinished, from the point of view of being commercial gasoline, in that it needed to go to a refinery for correction of its boiling points before it would be marketable gasoline; and it then shifted to the position that "unfinished" was not "unrefined," and that blending to correct boiling points was not a process of refining.

On the other hand, the evidence of all persons qualified to give testimony concerning the use of the terms "refined" and "unrefined" as a special use applied to the petroleum industry, testified in substance that blending was a part of the art of refining, and that a product unfinished was unrefined until finished, and that a refined product was a finished product. What more conclusive

evidence could there be of the proper definition of the term "unrefined naphtha" used in the tariffs than that the very officers who established it placed the same construction on the term that those versed in the art of refining did.

The statute of Texas (Act of March 24, 1919) which was offered in evidence and rejected, is as follows:

*"Section 1.* It shall hereafter be unlawful for any person, firm, association of persons or corporation, to sell gasoline, benzine, naphtha, or other similar product of petroleum, capable of being used for illuminating, heating or power purposes, under any other than the true name of said products; and such petroleum products shall be subject to inspection by the proper authorities as provided in this act.

*"Sec. 2.* It shall hereafter be unlawful for any person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naphtha or other highly inflammable substance made from petroleum to fail to plainly mark the packages containing the same in accordance with the regulations of the Interstate Commerce Commission unless such regulations should conflict with the provisions of this act.

*"Sec. 3.* It shall be unlawful for any person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naphtha or other similar product of petroleum, to fail to truly label in large letters showing the name of the manufacturer and the place of manufacture of the products, any tank car, barrel, cask, tank wagon, receptacle or reservoir in which any petroleum product shall be shipped or stored within this state, or from which sales or delivery of the same are to be made.

*"Sec. 4.* It shall hereafter be unlawful for any person, firm, association of persons or cor-

poration, to sell any product of petroleum to be used for illuminating purposes unless such petroleum product is such that it will not flash at a temperature less than 110 degrees Fahrenheit.

"*Sec. 5.* It shall hereafter be unlawful for any person, firm, association of persons or corporation, to sell as gasoline any substance, liquid or product of petroleum which falls below the standard and definition of gasoline as provided in this act.

"*Sec. 6.* For the purpose of this act the word GASOLINE whether used alone or in connection with other words shall apply only to the petroleum products complying with the following minimum requirements:

"(a) Boiling point must not be higher than 60° C (140° F).

"(b) Twenty per cent of the sample must distill below 105° C (221° F).

"(c) Forty-five per cent must distill below 135° C (275° F).

"(d) Ninety per cent must distill below 180° C (356° F).

"(e) The end or dry point of distillation must not be higher than 220° C (428° F).

"(f) Not less than ninety-five per cent of the liquid will be recovered from the distillation.

"(g) Gasoline to be high grade, refined and free from water and all impurities, and shall have a vapor tension not greater than 10 pounds per square inch at 100 degrees Fahrenheit temperature.

"*Sec. 7.* The apparatus and methods of conducting all tests and arriving at proper standards of gasoline and other products under this act shall be those now or hereafter authorized and used by the U. S. Bureau of Mines."

*General Laws of Texas, 1919, Chap. 125* (passed by Senate Feb. 28, 1919, House March 17, approved March 24, effective 90 days after adjournment).

It is not necessary to consider whether as a police regulation this statute might validly apply even to interstate commerce, particularly so since during the time the Interstate Commerce Commission rule authorizing the calling of the material "casinghead naphtha" was in effect it was possible to comply with those rules without violating this statute.

The specifications given in this statute of the only material which may lawfully be called "gasoline" are the same as the War Department's standard, the Bureau of Mines' standard and defendant's own standard (*Rec.*, p. 596). The Government does not dispute the fact that the material shipped does not begin to meet these specifications, but, on the contrary, is wholly outside of them. Instead, the Government insists that whether or not a gasoline meets some particular standard does not determine whether or not it is gasoline. We do not dispute this proposition, nor do we for a moment contend that all material which does not meet these particular specifications is not gasoline. We concede that any material which will meet the definition given by defendant's experts, *i. e.*, one suitable for ordinary use under ordinary circumstances in an ordinary motor car, is gasoline. This statute was not offered with any idea of attempting to prove that only such material as meets the specifications therein given is gasoline. It was offered upon the theory of negating the implication sought to be raised by the Government's testimony that the material shipped was customarily called gasoline.

Section 4353 of the Revised Laws of Oklahoma, 1910, is as follows:

"Gasoline, benzine, naphtha or other highly inflammable liquids, the products of petroleum, shall not be tested by the flash test, but the said fluids shall be tested as to their safety by the specific gravity test. Whenever the said liquids shall be

shown to have a specific gravity greater than seventy-four degrees (at a temperature of sixty degrees Fahrenheit) as indicated by the Baume hydrometer for liquids lighter than water, then it shall be deemed unsafe, and its sale or other disposition is hereby prohibited for use in vapor stoves or other domestic uses, and any person selling or otherwise disposing of the same shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars for each barrel, cask or other receptacle or part thereof of such oils so sold as above prohibited."

*Revised Laws of Oklahoma, 1910, Vol. 1, Sec. 4353.*

It will be noted that this section of the Oklahoma laws declares to be unsafe, and prohibits the sale for use in vapor stoves or other domestic uses, any liquid having a specific gravity greater than 74 degrees Baume at 60 degrees Fahrenheit. The evidence in this case shows that the material shipped runs from 74 to 84 degrees Baume. Clearly, therefore, it comes within the class declared by this law to be unsafe and prohibited to be sold for use in vapor stoves or other domestic use.

In addition to the above two statutes, the defendant offered to show that the State of Oklahoma, which has a gasoline inspection and tax law, does not tax or inspect this material as gasoline.

If the proper name of the material in question is to be determined, not as a scientific fact known to the court and shown by the scientific literature on the subject, but is rather to be determined and shown by the custom of the people in the use of names to designate it, it is difficult to conceive of a higher class of evidence of this character than the laws of the people. When custom and usage are in question, there is nothing so persuasive as the laws of the community involved. Suppose there was evidence to the effect that there had been a custom

in the State of Texas of calling this material "gasoline." What stronger evidence could there be that such custom had been stamped out than in showing that the laws of that state had made it criminal to indulge the practice. It should be borne in mind that the proof of custom offered is not direct evidence of what the material is, but simply evidence from which an inference might be drawn. Here, however, we have a statute that prohibits such a custom. It is inconceivable that a state would pass a law making it a criminal offense to describe a commodity by its true name. On the other hand, the inference is irresistible that a statute of this character was passed for the express purpose of preventing the use of an improper name of the commodity. The suggestion of the trial court that the statute may have been passed at the instance of defendant, as a reason for its exclusion, is of course absolutely without merit (*Rec.*, p. 724). Even if such had been the case, the statute would none the less have been admissible, for it cannot be assumed or presumed that the legislature was corrupted or that it acted otherwise than properly. There is little doubt, however, of the effect upon a jury of a remark of this character by the trial court in its presence.

The law of Oklahoma and its practice with respect to taxation and inspection stand upon the same footing as the Texas statute. There could be no higher quality of proof of the custom and usage of a people than its laws and official acts. The Corporation Commission is under a duty of law to inspect and collect taxes on gasoline. If this material were in fact gasoline, it would be violating its duty not to inspect and tax it as such. It is entitled to a presumption of discharge of its legal duty. And consequently, whatever value may attach to its interpretation and conduct towards establishing that the material is not in fact gasoline, certainly its interpretation and conduct must have great weight towards establishing custom and usage to the contrary.

## PART IV (j).

**The rejection of other evidence offered by defendant was erroneous.**

The evidence here considered is covered by Assignments of Error as follows:

LXI (*Rec.*, p. 1616), testimony (*Bill of Exceptions*, *Rec.*, pp. 282, 283) offered on cross examination of Government witness Waddell, the carrier agent at destination, by which defendant sought to show that upon the first attempt of the carriers to assess gasoline rates on its shipments defendant procured a preliminary injunction from the United States District Court for the Southern District of Texas, which was still in force: LXX (*Rec.*, pp. 1627-1629), rejection of defendant's exhibits 143 to 148, inclusive (*B. of E.*, *Rec.*, pp. 1478-1499), being certified copies of the pleadings in said injunction suit (*B. of E.*, *Rec.*, pp. 786, 787): LXVII (*Rec.*, p. 1624), rejection of evidence offered by defendant by its expert witness, Dr. Schock, tending to show how it is possible scientifically to determine by its curve that a mixture of casinghead product and lubricating oil is not gasoline (*B. of E.*, *Rec.*, pp. 733, 734): LXVIII (*Rec.*, p. 1625), rejection of evidence offered by defendant by its expert, Mr. Taber, that the definition of the term "unrefined naphtha" given in the work of Bacon & Hammer (read by him) comprehended casinghead product (*B. of E.*, *Rec.*, pp. 780-784): LXXII (*Rec.*, p. 1630), rejection of the evidence offered by defendant on cross examination of the Government's expert witness Dykema as to the finished commercial products of a petroleum refinery (*B. of E.*, *Rec.*, pp. 864, 865).

Bearing in mind that the court had already admitted evidence offered by the Government, which it was claimed tended to show intent, it was naturally of the utmost



importance that the defendant should be accorded opportunity to negative the existence of any such intent. With this object in view, defendant sought to show that after the material had been transported by the carriers for over two and a half years upon the description "unrefined naphtha," with full knowledge to them through the observance of the safe transportation regulations which required and permitted that certain placards be used only upon casinghead product, upon the first attempt of the carriers to assert that such description and classification was wrong and that the gasoline rates should instead be applied, defendant immediately enjoined said carriers and put up a bond to protect them in the amount of the difference between the charges in the event it should ultimately be found by the court that the gasoline rates should be applied, and attempted to bring this matter to issue on the merits months before any indictment was returned. Surely such a course indicated the best of faith on the part of the defendant.

Even if it be supposed that the defendant was wrong in its belief that the material should be properly classified as unrefined naphtha, that alone would not be sufficient to convict it of a crime of wilfully and knowingly obtaining a concession. Consequently, when the Government had been permitted to produce evidence of intent, the defendant ought certainly to have been permitted to show this circumstance as negating intent.

There is a rule frequently adverted to in this class of cases with which this court is of course familiar, to the effect that it is not incumbent upon the Government to expressly establish intent, that is, that under the familiar doctrine that persons are presumed to intend the natural consequences of their act, that proof of the act is sufficient to imply intent. Since the enactment of the Elkins Act, the Government has persistently taken the position that this rule means that there is an *irrebuttable* presumption

that whatever is in fact unlawful, was in fact so intended to be. In other words, that what is the legal rate is a legal conclusion; that any departure therefrom is therefore unlawful; that, being as the thing which is unlawful had been done, there was an irrebuttable presumption that it was intended to be done. The doctrine was urged upon this Court in the *Armour case* (209 U. S. 56), and left by it as a *quaere* undecided.

In the *Lehigh Coal & Navigation Company case* (250 U. S. 556), the defendant below sought to offer evidence tending to show its good faith in the transaction there involved, upon the theory that such showing tended to negative wilful intent and that the defendant was entitled to have the jury pass on the question of intent as a fact. The trial court, however, struck this evidence out and refused to allow it to go to the jury, upon the contention that the intent was irrebuttably to be presumed from the acts and that if there was any mistake it would not be a mistake of fact but of law. The propriety of this course of the trial court was certified to this Court by the Circuit Court of Appeals, and the Supreme Court, brushing this nonsense aside, reversed the conviction and sent the case back for retrial. The defendant in that case had offered evidence tending to show that an attempt had been made to publish, in what was conceived to be legal tariff form, certain lateral allowances made to it; that it believed, and had reason to believe, that they had been lawfully published; and that the Interstate Commerce Commission's investigators had examined into the matter and raised no objection. The defendant's evidence along this line was received over the objection of the Government, but the court finally struck it out and refused to submit the question of good faith to the jury, and the certificate of the Circuit Court of Appeals to the Supreme Court asked the following questions:

"1. In the criminal prosecution of a shipper for knowingly accepting transportation at less than

the duly established rate by receiving an allowance that was referred to in the tariff but was not specified in figures therein, has the defendant a right to offer evidence that the allowance was received under the honest belief that it was lawfully established by the tariff, and under the honest belief that in receiving it he was not disregarding what he believed to be the provisions of the tariff but was complying therewith?

"2. Upon the foregoing facts, and in view of the kind and amount of evidence offered upon the subject of good faith, did the District Court err in the present case by refusing to submit the question to the jury?" (250 U. S. 562.)

Upon these questions the opinion of the Supreme Court is as follows:

"The questions asked depend upon the construction of the Elkins Act, as enacted in 1903 (32 Stat. 847) the relevant part of which is as follows: '• • • It shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall *by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier* • • •.' And under an amendment in 1906 (34 Stat. 584), an offender, 'whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebate, concession, or discrimination shall be deemed guilty of a misdemeanor.'

"The way to a correct construction of the act was to an extent cleared by the case of *Armour Packing Co. v. United States*, 209 U. S. 56. Its evolution was there detailed. It was said that carrier and shipper are charged with an equal re-

sponsibility and liability and that the act 'proceeded upon broad lines' to accomplish this equality, and 'that the only rate charged to any shipper for the same service under the same conditions should be the one established, published and posted as required by law.' And this was declared in various ways to be the test of obligation and liability and the 'form by which or the motive for which' its evasion or disregard is accomplished is not of modifying or determining consideration. It was in effect decided that the purpose of the statute took emphasis and meaning from the use of the word 'device,' and 'device' was defined to be 'anything which is a plan or contrivance' and is 'disassociated' from qualification and 'need not be necessarily fraudulent,' and by it the act sought 'to reach all means and methods by which the unlawful preference of rebate, concession or discrimination is offered, granted, given or received.'

"It is in effect the contention of the Government that the language of the case exhausts definition and excludes the supposition of the questions of the Circuit Court of Appeals. We are unable to concur. The language of the case is easily explained by the question that was presented for decision. The Armour Packing Company contended that the act was directed only at fraudulent conduct, the obtaining of a rebate by some dishonest or underhand method, concession or discrimination. The language of the court was addressed to this contention and its selection and adequacy are manifest.

"No such contention is made in the case at bar and there are other distinguishing elements. It will be observed that by the statute and the decision the test of quality is the tariff rate. It was said in the opinion that it is 'the purpose of the act to punish those who give or receive transportation, in the sense of actual carriage, at a concession from the published rates' (*New York Central R. R. Co. v. United States*, 212 U. S. 500, 505). And such was the offense of the Armour Packing Company.

There was no evasion of the tariff rate in the case at bar. The filed tariff indicated the existence and obligation of the 10th covenant of the lease from the Company to the Railroad, that is, the fact of the allowance was declared, though it did not have specification in figures. The tariff, of course, would have been more definite and complete with such specification, but its sufficiency was certainly believed in, for between 1906 and the date of the indictment it had 262 repetitions. The Company was given besides the assurance that it had the sanction of the Interstate Commerce Commission.

“There was no attempt at deception. The Commission knew by examination of the Company’s books of the allowance and the amount of the allowance. Such, then, is the situation, and distinguishes the case from the *Armour Packing Company* cases. There there was an omission to comply with the statute and the omission was attempted to be justified by honesty of motive and purpose; here there was compliance or attempted compliance with the statute—a tariff filed—and if a question could be raised upon its legal sufficiency and belief of the Company in its legality was supported by high authority and those circumstances can bring into action and exculpating effect the provision of the statute which requires the acceptance of a rebate to be ‘knowingly’ done to incur the guilt of a misdemeanor. This conclusion gives no detrimental example against the efficacy of the law.

“We think this comment and conclusion enough to dispose of the questions asked and that there is no necessity to review the cases cited by the Company or the Government.

“Some of the contentions of the Government we may notice. It is contended that the ‘lateral allowance’ provided for in the 10th covenant and footnote to the tariff was not for transportation services and besides that there was no testimony whatsoever that the meaning of any provision of the tariff was misunderstood. The mistake, if any, it is hence insisted, was a mistake of law, not of

fact. Two deductions are hence made by the Government: (1) That the allowances were not made for transportation services; (2) mistake of law is irrelevant to the question of the guilt or innocence of the Company.

"To the first we may reply it is not involved as an element in the question asked of this court and if it have any justification, as to which we express no opinion, it no doubt will be considered by the Circuit Court of Appeals upon the return of the case. The other expresses a refinement. Indeed, the contention of the Government is somewhat elusive and we are not sure that we exactly estimate it. It is said, 'The sole misunderstanding which the excluded testimony tended to show would consist in supposing that the 'allowances' could be justified by the footnote in the tariff and that, as we have seen, would be a misunderstanding of the Elkins Act, not of the tariff.' We are unable to concur. There was no misunderstanding of the Elkins Act or what it required. The misunderstanding was induced by practice and the opinion of those in authority that the act was complied with and the word 'knowingly' therefore, as we have already indicated, must be considered and given exculpatory effect if error there was.

"We therefore answer the first question in the affirmative, but as explained by reference to the certificate of facts above. We do not think it is necessary to answer the second question." (250 U. S. 562-566.)

In the present case the situation is even worse than it was in the *Lehigh Coal & Navigation case*. Here the court allowed the Government to produce evidence of supposed intent, *but refused to allow the defendant to introduce evidence to negative such supposed intent*.

The evidence offered by Dr. Schock concerning the character of a curve that would result from the distillation test of material composed of a mixture of casing-head product and lubricating oil was important. It was

shown by an abundance of testimony that the approved method of determining whether or not a material was suitable for use as gasoline was by plotting the curve of its distillation; that such a curve would demonstrate by the relation of the boiling points whether or not the material was suitable. As an illustration, he was demonstrating that the curve of such a mixture as that suggested would indicate why the material would not be gasoline. With such a demonstration it would have been simple for the jury to understand the reasons why, and believe that, the casinghead product, either unblended or blended as shipped to defendant, would not be suitable for use as gasoline.

The rejection of Mr. Taber's testimony, to the effect that the definition of the term "unrefined naphtha" given in the work of Bacon & Hamor (read by him) comprehended casinghead product, was quite unfair to the defendant. The work of Bacon & Hamor had been written in 1914 and published in 1916, long before any of the transactions involved in this trial had occurred, and the fact that their definition of the term would embrace this material was extremely important. This court can see that it is a fact that the definition would comprehend this material, the definition being that it was those naphtha fractions boiling up to a temperature of 150 degrees Centigrade under atmospheric pressure. As the evidence of all the experts and all of the tests showed the material to be such, the witness ought therefore to have been allowed to explain to the jury that such was the case. The bare statement of the definition to the jury was not sufficient to show it that the material was embraced therein.

The rejection of the evidence sought to be adduced from Government witness Dykema upon his cross examination as to the finished commercial products of a petroleum refinery was excluded by the court upon the theory that he had not been qualified as an expert refiner, and that the defendant had objected to his attempting to



give testimony of that character. The fact is, however, that he had testified at considerable length concerning refining (*Rec.*, pp. 833-838), and this was proper cross examination of such testimony. He would have been compelled to name gasoline as one of the finished commercial products of a petroleum refinery and to have excluded casinghead gasoline from his enumeration, and as he was arguing to the jury that casinghead gasoline was not unrefined, because it was pure, he would thus have destroyed his argument by failing to include it as a refined article.

When it is evident that a paid expert of this character seeks to sustain, by argument and equivocation, the contention he is employed to sustain, it is obviously necessary, in order to show the inconsistencies of his testimony, to do so, by indirection, as it is to be expected that he would otherwise attempt to reply argumentatively in a way to sustain the contention desired.

#### **PART IV (k).**

**Inflammatory, prejudicial and unfair comment and improper procedure indulged by Government counsel and the court in the presence of the jury resulted in the denial to defendant of a fair trial.**

The matters herein discussed are the subject of the following Assignments of Error:

LXXV (*Rec.*, p. 1632), statement by Government counsel Payne in the presence of the jury to the effect that defendant and the Gypsy Oil Company were in a conspiracy to misbill the shipments (*Bill of Exceptions, Rec.*, pp. 273, 274): LXXVI (*Rec.*, pp. 1632-1634), statements by Government counsel Payne in the presence of the jury implying that the witness Timmons was not testifying truthfully, and tending to impeach said wit-

ness, who had been called by the Government (*B. of E., Rec., pp. 307, 308*): LXXIX (*Rec., p. 1638*), statement of Government counsel Payne in the presence of the jury, to the effect that defendant had misrepresented to the carriers in a certain letter (*Ex. 97, Rec., p. 1376*) the commodity to be shipped, and when called upon by the court to show where the alleged misrepresentation was contained in said letter said it was not there in black and white, but there just the same (*Rec., p. 570*): XXIX (*Rec., pp. 1590, 1591*), XXX (*Rec., p. 1591*) and XXV (*Rec., p. 1598*), permitting by the court, over objection, of the persistent reading by Government counsel into questions contents of writings not offered in evidence (*B. of E., Rec., pp. 470-472, 500*): LXXVII (*Rec., pp. 1634, 1635*) and LXXVIII (*Rec., pp. 1635-1638*), statements by the court in the presence of the jury implying that defendant was making technical objections or objections not authorized by law, and suggesting that as a consequence he would keep the parties there three months and adjourn the jury over (*B. of E., Rec., pp. 359, 360, 362-364*); CXVIII (17) (*Rec., p. 1663*), improper comment of Government counsel in summing up, by Government counsel Payne to the effect that the defendant had used improper, illegal and fraudulent means to obtain the establishment of rates intending to falsely bill thereunder (*Rec., p. 935*); by Government counsel Gann, that one of the defendant's experts was an employee of the Mellon Institute, that it was founded by the Mellon family, that Mr. W. L. Mellon is president of the Gulf Oil Corporation, there being no evidence in the record to sustain such statement, and it having a tendency to prejudice the jury against said expert's evidence (*Rec., p. 956*); suggestion by Government counsel Gann that by reason of federal control the Government had suffered financially as a result of the transactions in question, and that the jury and all the general public would have to contribute to make up the amount of which it was alleged

the Government had been deprived (*Rec.*, p. 906); comments by Government counsel Chambers upon the wealth of defendant and to the effect that it had deprived the Government of hundreds of thousands of dollars, of which the people would have to bear the burden, and statements to the effect that defendant had violated the safe transportation rules, whereas it was judicially admitted by Government counsel in the course of the trial that defendant had on the contrary complied with such rules (*Rec.*, pp. 906-908); further statements by Government counsel Chambers, after having been cautioned by the court, that the mutilated records had been brought to the grand jury with a knowledge of their mutilation which had been concealed from the grand jury, there having been no evidence whatever offered from which even an inference could be drawn as to what had transpired before the grand jury, and the repetition of the suggestion, after warning by the court, by stating that the force and effect of everything was as he had previously said (*Rec.*, pp. 910, 911).

Error has been assigned to but a few instances of the character of these herein considered, simply for the purpose of demonstrating how unfairly the case was tried.

As pointed out in Part II of this brief, misbilling is itself an offense for which the Gypsy Oil Company could be (and in fact has been) indicted, which is an entirely different offense from that charged in this indictment. As argued in Part III, this defendant was entitled to a trial on the charge of accepting a concession, and a concession is a thing voluntarily given by the carriers; and to create the impression with the jury that the offense charged would be made out if the jury was convinced that the carriers had been defrauded, was entirely unwarranted and unfair.

In the case of the attempt to impeach the witness Timmons, an unbiased reading of his testimony shows that he testified as fairly and truthfully as a man could, and it

is obvious that Government counsel was simply nettled at his own failure properly to comprehend the subject under discussion and took it out on the witness, and, because the evidence proved unfavorable to the Government's contention, created in the presence of the jury an atmosphere of doubt as to the truthfulness of the witness.

The statements by the court, in the presence of the jury, implying that counsel for defendant were making unreasonable and technical objections, the result of which would be to hold the jury for three months, were highly unfair and unjudicial. Counsel for defendant were earnestly striving to compel a trial of the case on legitimate evidence, and the very fact that the court ultimately sustained the objections made conclusively proves that they were not unwarranted. Defendant's counsel were willing to admit, and ultimately did admit, the relevant facts then being sought to be proved by the Government, which was at first unwilling to take the admissions as offered.

The statements by Government counsel Payne, to the effect that defendant, in its letter *Exhibit 97*, had misrepresented to the carriers the commodity which it was intended to ship, which misrepresentation, although not there in black and white, was there nevertheless, and which he reiterated in summing up, were most unfair, particularly in the light of the fact that defendant had attempted to show by the witnesses Reilly and Powers, and upon objection of the Government had by the court been denied an opportunity to show, what the understanding of the carrier agents was as to the representations contained in the letter in question. Defendant offered to show by the witnesses Reilly and Powers that they were not misled by the letter, but understood it to be in line with the negotiations theretofore undertaken by Mr. Ellis with them, and that they acted upon it on such understanding; and this evidence the court excluded upon the objection of the government. Consequently, it

poorly laid in the mouth of the Government to ask the jury to guess that the carrier agents had been deceived when they themselves had been prevented from telling whether they had or not.

The remarks of Government counsel Gann, implying that Dr. Bacon, because of his connection with the Mellon Institute, was under the domination of Mr. Mellon and therefore, by implication, under the domination of defendant, were absolutely unworthy. Yet it is an insinuation which might tend considerably to influence a jury so far removed from Pittsburgh as to be unlikely to be familiar with the Mellon Institute.

The further suggestion by both Government counsel Gann and Chambers in summing up, that the jury would be financially affected in the way of taxation by the transactions involved, was a most outrageous attempt to influence its action by a plea to its pocketbook. In attempting to reply to this suggestion, counsel for defendant suggested to the jury that such would not necessarily be the case, that if defendant was wrong in its description it was still open to civil suit for the recovery of charges, and as it would be able to respond to such a judgment the jury would not be warranted in assuming that they personally would suffer financially. Government counsel Chambers then took advantage of this statement to attempt further to inflame the jury, by commenting on the wealth of the defendant, and again suggested that the jury would be financially affected by the alleged failure of defendant to pay the proper freight rates. He attempted further to inflame the jury by suggesting that defendant's course in violation of safe transportation rules respecting dangerous articles had jeopardized public transportation. This statement was absolutely unwarranted, the Government itself having conceded that defendant complied with the safe transportation regulations (*Rec.*, p. 436).

This character of comments and the refusal of the court to specifically instruct the jury upon the request of defendant that the Government had in fact admitted that the safety regulations had not been violated, instead leaving it to the jury to depend upon its recollection, and the failure of the court to place in the right light before the jury the statements concerning the ability of the defendant to respond in damages, instead of merely leaving the situation that both parties had gone outside the record, was most unfair to the defendant.

As previously stated, only a small portion of the exceptions to comments of the character above noted were assigned as error, and this was done merely for the purpose of showing that defendant did not receive the fair trial to which the Constitution entitled it.

#### **PART IV (I).**

**The court should have directed a verdict of acquittal.**

Assignment of Error LXXXII (*Rec.*, pp. 1646, 1647).

At the conclusion of all the evidence, the defendant moved the court to instruct a verdict for defendant upon the ground that the evidence showed that there was involved a question concerning the construction of tariffs filed with the Interstate Commerce Commission, jurisdiction to construe which is exclusively confided to that body, and the trial court without jurisdiction; and upon the further ground that there was a variance between the proof and indictment, and that the defendant was not guilty (*Rec.*, pp. 899-901).

The two first grounds, i. e., lack of jurisdiction and variance, have been hereinbefore considered under subdivision (a) of this Part. There remains the further ground that upon all the evidence no case was made out.

If the court should be of the opinion urged in subdivision 1 of (a) of this Part, that it is a matter of judicial knowledge that the material involved in the controversy is not gasoline, it was of course the duty of the trial court to have instructed a verdict for defendant. Even if, however, the court does not so find as a matter of judicial knowledge, it is submitted that the proof overwhelmingly established that the material in question was not in fact gasoline. As hereinbefore stated, no direct proof was offered by the Government in its direct case to the effect that the material was in fact gasoline. The only character of proof was that offered on the theory of admissions, to the effect that the material had been called gasoline at other times and under other circumstances. On rebuttal, the Government did call two expert witnesses, who attempted, in substance, to testify that the material was gasoline. It appeared from their evidence, however, that they simply used the name "gasoline" as interchangeable with "naphtha," so that the question resolved itself not into whether "naphtha" or "gasoline" was appropriate—as it was conceded that both were—but rather as to whether the material was unrefined. There was no attempt to dispute the proposition that it never had been refined by any human agency, but a claim that it had been refined by nature underground, which was obviously but a theory at most. And it was further admitted by these witnesses that their claim that the material was not unrefined was based upon the use of the word "refined" as synonymous with "pure." The proof was overwhelming, however, that the word "refining" as applied to the petroleum industry is not synonymous with "purification," but, so far as purification is involved, it is only incidental, and that refining consists in the necessary processes to produce the finished products of petroleum oil. Upon this evidence the case ought not to have been allowed to go to the jury.



Apart from the foregoing, there was a complete failure of proof on the part of the Government of the averments in the indictment to the effect that defendant knew the gasoline rates alleged to have been in force. Without some proof to substantiate this averment, the practical effect would be to read the word "knowingly" out of the statute. Doubtless the Government would say, in response to this, that it is not necessary for it to offer proof of such knowledge, that shippers are presumed to know the rates. Expressions to that effect may be found in civil cases, but they have absolutely no bearing in a criminal case where knowledge is an essential element of the crime. The more correct expression to have used in such civil cases is that it is immaterial whether a shipper knows the rate or not. He is bound of course by the legal rate so far as his liability to pay it is concerned. This is a wholly different proposition from the requirement of knowledge as an incident to a criminal offense.

In the first *Standard Oil* trial (155 Fed. Rep. 305), Judge LANDIS held, in substance, that a shipper was *conclusively* deemed to know the lawful rate, and excluded evidence tending to show that it did not in fact know the lawful rate. This was one of the questions upon which the Circuit Court of Appeals reversed the judgment of conviction.

*Standard Oil Co. of Indiana v. United States,*  
164 Fed. Rep. 376.

The syllabus of the decision of the Circuit Court of Appeals is as follows:

"Under Elkins Act, Feb. 19, 1903, c. 708, 32 Stat. 847, Sec. 1 (U. S. Comp. St. Supp. 1907, p. 880), making it unlawful for any person or corporation to accept or receive any rebate, concession, or discrimination in respect to the transportation

of any property in interstate or foreign commerce, and requiring the filing and publication of interstate rates, a shipper cannot be convicted of accepting a concession from the lawfully published rate without proof of knowledge of what such rate in fact was; and hence evidence that the shipper had no knowledge of the published rate, and could only have ascertained the same by construction of several tariff sheets, the application of which was questionable, was admissible."

When the case went back for retrial, Judge ANDERSON, expressing the view that if a tariff were properly posted it might raise a presumption of knowledge against the shipper, ultimately directed a verdict in favor of the defendant for lack of proper proof of establishment of the rate alleged and knowledge thereof.

Whether the proper posting of a tariff might raise a presumption of knowledge, is not here important, because the indictment does not aver, and no proof whatever was offered, that the tariffs were posted. All the indictment avers is that the defendant had knowledge of these rates, and as to this there was not a scintilla of actual proof.

In *United States v. Miller*, 223 U. S. 599, an indictment under this act had been quashed by the Circuit Court upon the ground that it failed to allege that the tariffs had been posted in accordance with law. The Court held that it was not necessary that a tariff should be posted to constitute the offense, and, obviously, it was therefore not necessary to aver or prove, in an indictment against the shipper, the fact of such posting. But it is significant to note that in that case the Government pointed out to the court that the indictment charged *knowledge* of the rate by the defendant (223 U. S. 600).

Clearly, if the averment of knowledge is necessary in the indictment, it must be proved, and, as before pointed out, an omission of the averment and proof of knowledge would be to read the word "knowingly" out of the statute.

## PART IV (m).

**Refusal of instructions to the jury requested by defendant was error.**

Assignments of Error LXXXIV to CXVI (*Rec.*, pp. 1648-1660) cover the following instructions to the jury asked by the defendant and refused by the court:

The instructions given the jury are shown at *pages 912 to 931* of the Record, and those asked by defendant and refused by the court are shown at *pages 931 to 943*.

It is considered that the court erred in denying the instructions requested numbered 2, 3, 4, 8, 9, 11, 12, 13, 15 and 16, for the following reasons:

While the charge clearly enough instructs the jury that it must be convinced beyond a reasonable doubt that the material shipped was gasoline, it nevertheless falls short of the instructions requested and which it is thought ought to have been given, because the jury, although convinced that the material might properly be called "gasoline," may also have believed that it might properly be called *both* "gasoline" and "unrefined naphtha." In such circumstances, the defendant could of course be guilty of no offense in utilizing the description which would accord it the lower of two possible rates. Quite apart from this, even if the jury were convinced that the material was gasoline, and that it could not properly be called unrefined naphtha, it was still necessary that it be convinced beyond a reasonable doubt that the defendant *knew* that it was gasoline *and* did not honestly believe that it could properly be called unrefined naphtha.

Knowledge is of the very essence of the offense under this act. While, as elsewhere pointed out, the defendant would be liable civilly for the lawful charges in the event they had not been collected, regardless of its knowledge or belief in the matter, to constitute an offense

there must be knowledge, and an honest belief of the defendant that the material could properly be called unrefined naphtha, would absolutely preclude a conviction. This would be so even if the jury believed that the material shipped could not be called unrefined naphtha; that it was gasoline, and that defendant knew it was called gasoline, if defendant also honestly believed that it could properly be called unrefined naphtha. This is not to say that it was incumbent upon the Government to disprove honest belief of defendant. But if the jury believed (as from the evidence it might very reasonably have) that the defendant honestly believed the material could properly be called unrefined naphtha, regardless of whatever else it might have been convinced of, it would have to acquit.

As previously pointed out, the conviction in the *Lehigh Coal & Navigation Co. case* was reversed by the Court expressly because the trial court struck out evidence of honest belief of the defendant. Certainly, if such evidence was admissible, it was for the jury's consideration, for such influence as it might have on its conclusion as to whether the element of the offense *knowingly* existed. Such being the case, the defendant here was entitled to have the jury instructed to acquit, if it was convinced that defendant honestly believed the material could properly be called unrefined naphtha.

The whole course of defendant throughout the period involved, of open conduct in relation to the matter, provided the most persuasive of evidence that it did so honestly believe. Why would defendant have notified the initial carrier of its intention to use the new description upon its becoming effective, why would it have placed on every shipping order the notice required and permitted by the regulations only as to shipments of casinghead product, why would it have given the Interstate Commerce Commission inspectors free and voluntary access

to its records, unless it honestly believed the material might properly be called unrefined naphtha?

As to requested instructions numbered 5, 6, 14 and 18, it is considered the court erred in denying them, for these reasons:

As previously pointed out, the offense with which defendant is charged is the acceptance of concessions—not fraudulent misbilling. A concession, to be such, needs to be consciously conceded. If the defendant fraudulently misbilled shipments, and thus by defrauding the carriers obtained transportation at less than lawful rates, it would not be guilty of the offense of accepting a concession, but instead of an entirely different offense—that of misbilling, for which it would be indictable and punishable. It was therefore entitled to have the jury properly instructed in this regard.

Request No. 7, which the court denied, in substance that the jury should not consider the evidence concerning the practice of the Gypsy Oil Company and others in referring to the material shipped as gasoline, as tending to establish that the material was in fact gasoline, but could consider such evidence only as bearing on the knowledge of defendant *after* the jury may have reached the conclusion independently that the material was in fact gasoline, ought to have been granted as the evidence would be wholly inadmissible as pure hearsay unless it was receivable upon the theory of admissions, as pointed out in Subdivision (b) hereof, and in such case the admissions would be receivable only as proving knowledge in order to find the necessary intent, *provided* the jury were independently convinced that the material was in fact gasoline.

Request No. 17, denied by the court, was, in substance, that the jury should acquit unless it was convinced beyond a reasonable doubt that casinghead gasoline is a product of petroleum oil.

As pointed out under Subdivision (h) hereof, the proof offered by the Government in support of the averment concerning rates on gasoline was on gasoline as a product of petroleum. On the other hand, the evidence of both the Government and the defendant's witnesses showed, without dispute, that science does not claim to say positively whether the casinghead gas is or is not a part of petroleum. While it may be reasonably questioned whether the court should have permitted the case to go to the jury at all, because of the fact that in these circumstances it would be impossible for the jury to reach a conclusion beyond a reasonable doubt in the matter, at least it would seem that there is no question that defendant was entitled to have the jury instructed that it must be convinced on the point, however frail the evidence.

Requested Instruction No. 19 sought to have the jury instructed that it must be convinced beyond a reasonable doubt upon each element of the offense.

While some of this request is covered by the charge, there is not a word in the charge covering Subdivision (c) of the request, that is, that the rates alleged in the indictment were known to the defendant or were posted at the stations over which the shipments were made. The statute requires knowledge; the pleader recognized the necessity of charging knowledge of the rates; yet there was no proof of such knowledge offered, and it would not have been possible for the jury to have found, owing to the lack of evidence, that defendant knew the rates.

It is considered that Requested Instruction No. 20 should have been given so that the jury might have understood that the carriers might with entire propriety and in accordance with custom publish a lower rate on a particular commodity under circumstances like those here involved. The refusal of the request left the jury possibly to infer that the very publication of the lower

rates in the situation constituted in itself a concession.

Requested Instruction No. 22 was that if the jury was in doubt whether casinghead gasoline is gasoline, it must acquit.

The evidence was undisputed that the material shipped is called casinghead gasoline. The very crux of the case, however, is whether casinghead gasoline is gasoline. It is considered that the mere instruction that the jury must be convinced that the material shipped was gasoline, was not sufficient, because the jury may have considered that they were so finding in merely finding that the material is known as casinghead gasoline, which fact was of course undisputed.

Requested Instructions 23, 24, 25, 26 and 31 related to questions of intent.

As previously argued, and as is obvious, any act to constitute evidence of intent must be an act before or at the time of the transaction having a tendency to accomplish the offense; or an act indicating guilty consciousness on the part of some one within the scope of whose employment would be embraced, at least in some degree, a relationship to the subject-matter of the offense. There was not a particle of evidence of either character. Yet the charge (*Rec.*, p. 926) leaves, and indeed invites, the jury to speculate as to whether or not the erasures offered as indicating conscious guilt might or might not have been made by some responsible agent. If the records in question were records having to do with freight rates, or were records of employees whose duty embraced matters of freight rates, it might be reasonable to permit the jury to draw an inference from a failure to explain the erasures. But, on the contrary, the evidence clearly indicates that they were not records of such a character, but were instead records having no relation whatever to the matter of freight rates and were made by persons whose duties were definitely shown not



to embrace matters affecting freight rates; and consequently, in the absence of any further evidence, it would be the purest speculation in the world from which two diametrically opposite inferences might be drawn, without the slightest degree of greater support for one than the other. In such case the matter is clearly not evidence at all, as it cannot tend to establish any issue in the case.

Refused Instructions 27, 28, 32, 34 and 35 were requests that the court instruct the jury concerning the meaning of the words "refined," "distillation" and "blending."

If, as argued in Subdivision (a) hereof, these words were to be considered in their ordinary meaning, it was the duty of the court to instruct the jury as to the meaning of such words.

Denied Instruction No. 30 was that the jury should not consider the evidence relating to the Texas Company paying the gasoline rate at all, unless and until it was convinced beyond a reasonable doubt that the material shipped was actually gasoline.

As pointed out in Subdivision (d) hereof, it may well be that the Texas Company was overcharged, and the very fact that it sought to recover the difference between the unrefined naphtha rate and the gasoline rate, which the defendant sought to be allowed to show, would negative any inference that the material was gasoline to be drawn from the fact that the Texas Company had paid gasoline rates. To allow the jury to reach the conclusion, based on the evidence that the Texas Company had paid gasoline rates, that the material was in fact gasoline, not only begs the whole question, but emphasizes the error in excluding the evidence offered by defendant to show that the Texas Company subsequently attempted to recover same.

That the denial of Requested Instructions 33, 36, and the instruction requested after the jury had retired, in

response to its request for additional instructions, was most seriously prejudicial to defendant, could not be better demonstrated than by the fact that the jury itself requested the additional instructions on the point involved.

It was most unfortunate, after the refusal to give these instructions in the first instance, that action on the jury's request for them was so long delayed that the jury finally found a verdict without them.

There were offered in evidence, and there was much testimony concerning them, the rules prescribed by the Interstate Commerce Commission concerning the safe transportation of explosive and inflammable articles. As previously pointed out, these rules, during the early part of the period involved, read that the material in question "may be" shipped as gasoline, and recited that when it "is shipped as 'gasoline'," etc., the word "gasoline" being in quotation marks; and during the latter part of the period involved provided that it must be shipped as gasoline, casinghead gasoline, or casinghead naphtha. It is beyond dispute that these rules and regulations are in no sense, and do not purport to be, rate regulations or descriptions for rate purposes, but are purely regulations requiring certain descriptions to be used for purpose of safety.

The evidence showed that throughout the period of time involved on all of the shipping orders there appeared the stamp required by these rules showing that the material shipped was casinghead product. It was of the utmost importance that the jury understand that these were not rate regulations, as of course it might otherwise have found conclusively against defendant on such a supposition. It was likewise of the utmost importance on the question of demonstrating defendant's honest belief in the propriety of its course in designating the material "unrefined naphtha," that the jury take into consideration the fact that in complying with

these regulations—as it was admitted by the Government the defendant had—the defendant clearly made no attempt to conceal the nature of the product, but, on the contrary, branded it so that every one handling it could not help but know what it was that was being called unrefined naphtha.

#### PART IV (n).

**The refusal of the court to set aside the verdict and to arrest judgment and the imposition of sentence, was erroneous.**

Assignments of Error CXVII (*Rec.*, pp. 1660-1664), denial of motion to set aside the verdict: CXVIII (*Rec.*, p. 1665), motion in arrest of judgment: CXIX (*Rec.*, p. 1665), sentence.

While it is recognized that a refusal to set aside a verdict and grant a new trial is not generally reviewable, still, where the circumstances show clearly, as it is considered they do here, that defendant was not granted a fair trial, the refusal amounts to an abuse of discretion, which of course is reviewable.

If it be considered that all the evidence ultimately admitted was properly receivable, still it is contended that defendant was so prejudiced by the admission of the evidence concerning the false test by the Government expert Dykema, even though it was later stricken out, and by the failure to furnish the jury instructions expressly requested by them concerning the safe transportation regulations, that the verdict should have been set aside and a new trial ordered. Apart from this, the court expressed its own doubt as to the propriety of letting the case go to the jury in view of the necessity of construing a tariff, and indicated that if it was a personal instead of a corporate defendant he would not do

so. In such case, inasmuch as the Government was persisting in trying the issue in a criminal case in the fashion it did, it would have been reasonable and fair to have permitted the case to go to the jury to afford the defendant an opportunity of acquittal.

On the other hand, on a verdict of conviction in such a situation, it would seem to be the manifest duty of the court to set it aside. Especially so since it was doubtful how much the admission of improper evidence subsequently stricken out may have contributed to the conviction. There is no principle that will justify less fair treatment of a corporation than an individual, and such a theory is absolutely repugnant to the proper administration of justice.

It is considered that judgment should have been arrested, and the indictment dismissed, upon the grounds considered in Part III and in Subdivision (a) of Part IV hereof.

### CONCLUSION.

It would seem apparent from a consideration of the evidence, even including that which it is claimed is not admissible, that the conclusion of the Circuit Court of Appeals is inescapable that the material in question could in no proper sense of the word be called "gasoline"; and the Circuit Court of Appeals might well have been warranted in remanding the case for dismissal of the indictment instead of for a new trial. Its judgment should, therefore, be affirmed.

Respectfully submitted,

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UNITED STATES *v.* GULF REFINING COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
EIGHTH CIRCUIT.

No. 40. Argued April 15, 16, 1925.—Decided June 1, 1925.

1. Under Jud. Code § 240, certiorari may be granted by this Court, at the instance of the United States, to review a judgment of the Circuit Court of Appeals reversing a judgment of conviction in a criminal case and remanding the case to the District Court for a new trial. P. 544.

2. Where a commodity shipped in interstate commerce is included in more than one tariff designation, that which is the more specific will be held applicable; and where two descriptions and tariffs are equally appropriate, the shipper is entitled to the one specifying the lower rate. P. 546.
  3. Evidence reviewed and *held* to establish that the shipments in question were not "gasoline" but "naphtha", and insufficient to prove that they were not "unrefined naphtha", within the meaning of a railroad tariff applicable. P. 546.
  4. A lower rate properly may be applied to a product shipped in an unfinished condition in the course of manufacture than that applicable to it when finished. P. 548.
  5. In a prosecution of a corporation under the Elkins Act on the ground that it received concessions through shipping its petroleum product as "unrefined naphtha" and not as "gasoline", under a tariff allowing a lower rate for the one than for the other, evidence of other and contemporaneous shipments of the same product to other places as "gasoline" under other tariffs offering no rate on "unrefined naphtha" had no tendency to prove that the product was not "unrefined naphtha" within the meaning of the tariff in question. P. 549.
  6. Nor in such case, did description of the shipments as "gasoline", in compliance with regulations made by the Interstate Commerce Commission under the Transportation of Explosives Act requiring such and similar products to be shipped as "gasoline, casinghead gasoline or casinghead naphtha", have a tendency to prove, or amount to an admission by the defendant, that the gasoline rate was applicable or that the shipments were not "unrefined naphtha" within the meaning of the tariff, since the purpose of those regulations was to require a disclosure of the character of the shipments having regard not to rates but to the dangers to be guarded against. P. 550.
- 284 Fed. 90, affirmed.

CERTIORARI to a judgment of the Circuit Court of Appeals reversing a conviction under the Elkins Act and remanding the case with directions to grant a new trial.

*Mr. James A. Fowler*, Special Assistant to the Attorney General, with whom *The Solicitor General* was on the brief, for the United States.

*Messrs. R. L. Batts and F. M. Swacker*, with whom *Messrs. H. L. Stone, Jr., and James B. Diggs* were on the briefs, for respondents.

*Mr. John F. Finerty*, filed a brief as *amicus curiae*, by special leave of Court.

MR. JUSTICE BUTLER delivered the opinion of the Court.

Respondent was convicted in the district court for the eastern district of Oklahoma on 99 counts, charging that it received concessions and discrimination in rates on gasoline shipped by the Gypsy Oil Company between December 2, 1916, and March 12, 1919, from Keifer, Drumright and Jenks, Oklahoma, to defendant's refinery at Port Arthur, Texas, in violation of the Elkins Act of February 19, 1903, c. 708, 32 Stat. 847, as amended by the Act of June 29, 1906, § 2, c. 3591, 34 Stat. 584, 587. The Circuit Court of Appeals reversed the judgment and remanded the case with directions to grant a new trial. 284 Fed. 90. This Court granted a writ of certiorari. § 240, Judicial Code. 262 U. S. 738.

Defendant, insisting that this Court is without jurisdiction, made a motion to dismiss the writ. The determination of the matter was postponed to the hearing on the merits. In *United States v. Dickinson*, (1909) 213 U. S. 92, it was held that certiorari could not be granted in a criminal case at the instance of the United States. Act of March 3, 1891, c. 517, 26 Stat. 826, 828. But that act was modified by the Act of March 3, 1911, c. 231, 36 Stat. 1087, 1157, being § 240, Judicial Code, which is as follows: "In any case, *civil or criminal*, in which the judgment or decree of the circuit court of appeals is made final by the provisions of this Title, it shall be competent for the Supreme Court to require, by certiorari or otherwise, *upon the petition of any party thereto*, any such case to be certified to the Supreme Court for its review and



determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court." The words italicized above were added to the provisions of the Act of 1891. The phrase "upon the petition of any party thereto" is not limited by the context. The language, circumstances and history of the enactment make clear the intent of Congress to give this Court jurisdiction on the petition of the United States to bring up criminal cases on writ of certiorari. See 46 Congressional Record, pp. 2134, 4001. And the petition may be granted, notwithstanding the Circuit Court of Appeals remanded the case for a new trial and did not render a final judgment therein. *American Construction Co. v. Jacksonville Railway*, 148 U. S. 372, 385; *Forsyth v. Hammond*, 166 U. S. 506, 513. The motion to dismiss the writ is overruled.

The Circuit Court of Appeals said (p. 102): "It is our opinion that when all competent and relevant proof in the case is given a fair and impartial consideration the conclusion that the verdict is without support, is inevitable," and held that the district court erred in denying defendant's motion that a verdict be directed in its favor. The United States asserts that this was error.

The pertinent language of the act, defining the offense charged, is as follows: ". . . It shall be unlawful for any . . . corporation . . . to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier . . . whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier . . . or whereby any other advantage is given or discrimination is practiced." (34 Stat. 587.) The gist of each count is that the Gypsy Oil Company delivered gasoline to interstate carriers by

railroad at places in Oklahoma,—Keifer, Drumright and Jenks,—for transportation to Port Arthur, Texas, there to be delivered to defendant; and that defendant knowingly did accept and receive from the carriers a concession or discrimination in respect of such transportation, whereby the property was transported at a rate substantially less than the lawful rate for gasoline. It is not alleged what defendant represented the commodity to be or what, if any, tariff was applied. It was shown at the trial that all shipments referred to in the indictment were made as “unrefined naphtha”, under tariffs specifying rates therefor substantially lower than the contemporaneous rates on gasoline between the same points. The rates then in force from Keifer are illustrative. They were “Oils; Petroleum Oil and its Products . . . listed under the head of ‘Petroleum and Petroleum Products’”, 39 cents per 100 pounds; “Gasoline in tank cars,” 33 cents, and “Unrefined Naphtha in tank cars”, 19½ cents.

Where a commodity shipped is included in more than one tariff designation, that which is more specific will be held applicable. *U. S. Industrial Alcohol v. Director General*, 68 I. C. C. 389, 392; *Augusta Veneer Co. v. Southern Ry. Co.*, 41 I. C. C. 414, 416. And where two descriptions and tariffs are equally appropriate, the shipper is entitled to have applied the one specifying the lower rates. *Ohio Foundry Co. v. P., C., & St. L. Ry. Co.*, 19 I. C. C. 65, 67; *United Verde Copper Co. v. Pennsylvania Co.*, 48 I. C. C. 663. It follows that, if the property in question properly might have been described either as gasoline or as unrefined naphtha, the lower rate was lawfully applied, and defendant was not guilty. And the burden was on the United States to prove beyond a reasonable doubt that the property so shipped was gasoline and was not unrefined naphtha.

The substance of the evidence as to whether the shipments complained of were gasoline or unrefined naphtha

is given in the opinion of the Circuit Court of Appeals, and need not be repeated here. The first distillation of crude oil takes off the elements more volatile than kerosene, and these taken together are known as the "naphtha fraction". After treatment with sulphuric acid, this fraction is divided by further distillation into three products,—gasoline, the lightest, benzine, the intermediate, and naphtha, which is called "painter's naphtha", the heaviest. The gravity of such naphtha is around 54 degrees (Baumé). Casinghead gasoline is produced by compression of gases which come from oil wells. Like the lighter ends or elements first coming off in the distillation of crude oil, casinghead gasoline is highly volatile and dangerous to handle. Its gravity is about 88 to 90 degrees and its vapor tension is from 20 to 30 pounds to the square inch. During the period in question some of the painter's naphtha produced at defendant's refinery was shipped from Port Arthur in tank cars to the casinghead gasoline compression plants of the Gypsy Company at Keifer and Drumright, there to be blended,—about one part naphtha to two parts casinghead gasoline. The gravity of the product was about 70 to 75, and its vapor tension less than 10 pounds per square inch. At Jenks, casinghead gasoline was not so blended, but it was subjected to a treatment called "weathering", which lowered specific gravity and reduced vapor tension to substantially the same extent as was effected by the blending with painter's naphtha. The shipment referred to in each count was casinghead gasoline so blended or weathered. Such reduction of specific gravity and vapor tension made permissible its transportation in tank cars, under the regulations of the Interstate Commerce Commission authorized by the Transportation of Explosives Act. Act of March 4, 1909, § 233, 35 Stat. 1088, 1134, amending act of May 30, 1908, § 2, c. 234, 35 Stat. 554. Regulations for the Transportation of Explosives and Other Dangerous Ar-

ticles, effective October 1, 1914, revised July 15, 1918.\* There is involved no claim on the part of the United States that there was any violation of the act or regulations.

The tariff on unrefined naphtha, under which the shipments complained of were made, became effective December 2, 1916. Prior to that, the blended product was shipped from Keifer and Drumright to defendant's refinery at the gasoline rate. The compression plant at Jenks was not put in operation until after that date. None of the products so shipped as unrefined naphtha was sent to the market or sold to be used as gasoline. All was used at defendant's refinery and mixed or blended with other products to make gasoline which defendant sold; it constituted from five to twenty-five per cent. of such gasoline. The casinghead gasoline, before or after such blending or weathering, did not correspond with specifications for any gasoline sold in the market for use as fuel for motor engines and the like. The evidence was not sufficient to sustain a finding that the casinghead gasoline in question was suitable for ordinary or general use as fuel for such engines. And, on a consideration of all the evidence, it must be held to have been established conclusively that such substance was not so used and was not reasonably suitable for such use. It follows, therefore, that, whatever it may be called, the product was not the familiar article of commerce sold as gasoline.

A lower rate properly may be applied to a product when in an unfinished condition than that applicable to it when finished. In *National Refining Company v. M. K. & T. Ry.*, (1912) 23 I. C. C. 527, it was held that rates applicable to refined oil were excessive when applied to carload shipments of the so-called lighter ends of petroleum

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\* This act has since been further amended (Act of March 4, 1921, c. 172, 41 Stat. 1444); and the Interstate Commerce Commission prescribed regulations, effective January 1, 1923.

which had been separated from crude oil by a skimming process,—that is, by distillation sufficient to take off the more highly volatile elements,—but which was useless for commercial purposes until a further process of refinement had been undergone; and that a reasonable rate on such product was not more than two cents per hundred pounds in excess of the rates contemporaneously applicable to crude oil. Subsequent to this decision, tariffs covering “unrefined naphtha” were put in effect on the lines from Muskogee, Oklahoma, to Coffeyville, Kansas, and from Oklahoma producing points to Baton Rouge, Louisiana. The product in that case was similar to the casinghead gasoline here in question. Both included the lighter ends or more volatile elements of crude oil; they were unfinished products and differed from ordinary gasoline of commerce in like respects. Presumably, this decision and these tariffs were known to and considered by the shipper and carriers when the tariff on unrefined naphtha was published. And before that tariff was put in, defendant’s representative applied by letter to the carriers for a “seventeen cent rate crude unfinished naphtha” from Port Arthur to Keifer and from Keifer to Port Arthur. The carrier’s representative testified that they were requested “to put in a rate on crude naphtha or unrefined naphtha or unfinished naphtha”, and that he did not recall which. The United States suggests that the shipper did not disclose to the carrier that it intended to ship the product here in question under the proposed tariff. But the evidence negatives any purpose to deceive or defraud the carriers and shows that the purpose of the carrier was to put in a tariff covering the unfinished product referred to in the negotiations as crude unfinished naphtha, crude naphtha, unrefined naphtha and unfinished naphtha.

The United States introduced evidence to show contemporaneous shipments by the Gypsy Oil Company of

such casinghead gasoline to Port Arthur billed as unrefined naphtha and to Pittsburg billed as gasoline, and also shipments by that company and others of the same product to other places, billed as gasoline. But it was not shown that the carriers had published any tariff covering unrefined naphtha to Pittsburg or the other points. In the absence of a rate on unrefined naphtha, such shipments are without significance. There was nothing to show, and no reason to presume, that all classifications had been made that could be made in respect of the numerous products of petroleum, and of those referred to in the industry as gasoline of one kind or another. There being no rate on unrefined naphtha or opportunity to choose between the gasoline rate and some other rate, shipments of the product as gasoline had no probative value or tendency to show that the product was not fairly described by and included within the phrase "unrefined naphtha" in the tariff in question.

The regulations of the Interstate Commerce Commission, revised July 15, 1918, required liquid condensates from natural gas or from casinghead gas of oil wells, alone or blended with other petroleum products, having a vapor pressure of not more than ten pounds per square inch, to be shipped as "gasoline, casinghead gasoline, or casinghead naphtha". Unrefined naphtha was not mentioned. The description of the shipments as gasoline under these regulations had no tendency to show that the tariff rate on unrefined naphtha was not applicable. The purpose of the regulations was to require a disclosure of the character of the shipment, having regard not to rates but to the dangers to be guarded against. It was not an admission on the part of the defendant that the gasoline rate was applicable or that the shipments were not unrefined naphtha within the meaning of the tariff. The language of the regulation illustrates the use of the word "naphtha" to include the casinghead product.

"Naphtha" is a generic term and embraces the lighter or more volatile parts of crude oil down to and sometimes including kerosene. This takes in all the elements of finished gasoline. The words "naphtha" and "gasoline" are often used interchangeably to include the unfinished product of which the gasoline of commerce is made. The thing shipped was an unfinished product. It was taken to Port Arthur to be used to make gasoline. The evidence required a finding that it was naphtha. The insistence of the United States is that it was not "unrefined". The processes for refining crude oil in the production of gasoline include the separation and combining of various elements of the crude product, and are not limited to the elimination of impurities. The evidence is not sufficient to sustain a finding that the making of gasoline of commerce by the use of the blended or weathered casinghead gasoline shipped to Port Arthur did not involve refining, properly so-called. But even if the process was, as contended by the United States, a finishing and not a refining process, it is clear that the phrase "unrefined naphtha" in the tariff in question was not misleading and did not contribute to any deception or fraud. The thing shipped was not ordinary gasoline, and it was lawful to distinguish it by tariff designation and to make the specified rate applicable. The words employed describe the product with sufficient accuracy. The evidence was not sufficient to sustain a finding that the shipments in question were not unrefined naphtha.

*Motion to dismiss denied*  
*Judgment affirmed.*